Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-89

VIRGINIA W. LUCOM, *Petitioner*

v.

DAVID L. REID, ETC., et al., *Respondents*

On Appeal from the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Virginia W. Lucom prays that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Fifth Circuit entered in this case on April 15, 1977.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (Appendix D, infra, page 26a) is a per curiam opinion on which has been stamped "Do Not Publish". It affirms the decision of the United States District Court, Southern District of

Florida, which was entered July 23, 1975 (Appendix C, infra, page 20a).

JURISDICTION

The judgment of the Court of Appeals (Appendix D, page 26a) was entered April 15, 1977 and this Court's jurisdiction is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

The following questions all involve the standards which must be used in ruling on motions to dismiss under Federal Rules of Civil Procedure 12:

1. May the complaint's substantial separate SECOND Count unrelated to taxation and alleging "a conspiracy to effect a partial taking of plaintiff's property without compensation by arbitrarily classifying it as a park, in violation of 42 USC 1985" be lawfully summarily dismissed because of 28 USC 1341?

2. May the THIRD Count, which realleges aforesaid SECOND Count, be lawfully summarily dismissed under 28 USC 1341, merely because it further alleges the conspiracy expanded to include a defrauding of plaintiff by a grossly discriminatory assessment of twenty times abutting comparables in violation of 42 USC 1985?

3. As to the FOURTH Count, where Florida statute reposes sole discretion, which is not subject to judicial review, in assessor to correct errors in prior assessment which he did over 1,600 times as to other properties on the 1974 tax rolls, but as to admitted gross error of $7,685,400 on plaintiff's property assessment assessor discriminatorily refuses for political reasons for correct same, can district deny jurisdiction of a valid complaint 42 USC 1986 because of 28 USC 1341 where there is no state court remedy?

4. As to FIRST Count, and every other count, can the district court summarily dismiss count denying jurisdiction because of 28 USC 1341, where complaint alleges plaintiff received no notice of proposed increased assessment and therefore did not seek administrative review of same which is a jurisdictional prerequisite to state judicial review?

5. As to FIFTH Count, and every other count, can the district court deny jurisdiction because of 28 USC 1341, where the present Florida administrative and judicial review is restricted to just valuation of assessment of complainant's property and unconcerned with inequality of assessment of comparable parcels?

6. As to ALL Counts, do Florida statutes and practice provide a "plain, speedy and efficient remedy" in its courts, under the circumstances of this case?

7. As to EACH Count separately, is it one to "enjoin, suspend or restrain the assessment, levy, or collection" of a state tax?

8. As to ANY Count, can the district court grant a motion to dismiss under 28 USC 1341, where complaint alleges precise facts and circumstances which bring the action within the exceptions to applicability of 28 USC 1341?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

STATUTES

28 USC 1341.

"Taxes by States. The District Court shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state."

42 USC 1985 (3).

> "If two or more persons in any State or Territory conspire. . . . for the purpose of depriving either directly or indirectly any person (or class of persons) of the equal protection of the laws or of equal privileges and immunities under the laws; "in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

F.R.C.P. 8(e)(2).

> "When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements."

STATEMENT OF THE CASE

This is an appeal from the per curiam order of the Fifth Circuit's order affirming the District Court's order granting Appellees' motions for dismissal of Appellant's Complaint on the ground that it lacked jurisdiction because of 28 USC 1341 in that it is "a suit to 'enjoin, suspend or restrain the assessment, levy, or collection' of a state tax and that a 'plain, speedy and efficient remedy' may be had in the state courts."

The Appellant, a citizen of the State of Maryland, bought in 1952 approximately 545 acres of raw unimproved land in Palm Beach County, Florida. She has owned it continuously since then and it has been zoned at all times here pertinent as "agriculture" and it has been kept in its natural unimproved, uncultivated status.

In 1973 various Appellees, not including the Assessor, who held various public offices, caused to be promulgated, without actual notice to the Appellant, a Land Use Map on which the bulk of Appellant's aforesaid tract was classed as public "Institutional" use, without any compensation to Appellant, and embarked upon a conspiracy to cause to be denied to Appellant's tract any different use or zoning change which would interfere with its dedication to public use as a park. Said appellees engaged in a conspiracy to in effect preclude any normal use of Appellant's tract other than as an incipient park, without compensation to Appellant. The scope and pertinent overt acts of the conspirators are set forth in paragraphs 35, 36, 37, and 38 of the Complaint Appendix A pages 12a and 13a and supported by various Exhibits annexed thereto. The acts include many, under color of law intended to (a) (preclude) normal use of the Ap-

pellant's tract (b) frustrate any rezoning (c) depress its value and otherwise harass any effort to deviate from "public" use. The foregoing activities constitute the Second Count of the Complaint, which do not involve the Assessor or taxation, but on the contrary, relate to dedication to the use of a public park without compensation, blocking of rezoning and harassment of activities which resulted in annexation of Appellant's tract out of the unincorporated area of the county into the Town of Greenacres City.

The Third Count of the Complaint alleges that the Assessor and an assistant joined the conspiracy in progress (Second Count) and engaged in various overt acts set out as First Count which include:

"5. Defendant Assessor DAVID REID under color of law, intentionally, invidiously, grossly and arbitrarily discriminated against plaintiff by illegally spot re-assessing unequally her 545 acres of unimproved land, zoned 'agriculture', from approximately $490,000.00 (or about $890.00 per acre) or a property tax of about $13,000.00 for 1973, to a 1974 assessed value of $10,993,440.00 at a 1974 property tax of $263,353.73, an increase in assessed value of about twenty-two times, or about $10,500,000.00 more assessed value without any change in zoning or present use, thus using a discrimination so gross as to amount in law to be a fraud whereby plaintiff will be defrauded out of over $240,000.00 for 1974 property tax in violation of her federal constitutional right of equal protection under law and in violation of 42 USC 1985 by his conspiracy with others in its accomplishment as hereinafter alleged. Scores of parcels of abutting adjoining or nearby land, with identical zone and use, are uniformly assessed in a range for 1974 assessment of $800.00 to $1,200.00 per acre (per Ex. A, attached map, incorporated herein by

this reference) or about one twentieth of that of plaintiff's land.

"6. (a) During the latter part of 1973 and during 1974 defendant CHARLES STAHMAN conspired with defendant DAVID L. REID and others presently unknown to plaintiff to specially re-assess in a grossly discriminatory and outrageously unequal basis, as a class, only the newly annexed land on the west side of the Town of Greenacres City, in furtherance of which plan, and under color of law, defendant did raise the assessment of the Lucom tract by over twenty times, without properly notifying the plaintiff.

"7. The Lucom tract 1974 assessed value of about $20,000.000 per acre (see paragraph 5, supra) is about twenty times that of abutting, contiguous, adjoining and all nearby acres similarly zoned agriculture as is established from Map of Comparables (Ex. A, annexed hereto and incorporated herein by this reference) which shows the assessment code, location, and 1974 assessed valued (sic) per acre of dozens of comparable and similarly zoned 'agricultural' parcels surrounding the Lucom tract. The gross disparity of twenty to one is the result of an intentional plan and system to invidiously discriminate against the plaintiff and the aforesaid conspiracy to thus deprive her of equal protection under law by virtue of manner in which said defendant REID administers same.

"8. The Lucom tract 1974 assessed value of about $20,000.00 per acre (see paragraph 5, supra) is about five to ten times that of acreage located in Greenacres and zoned R-2 (up to fifteen dwelling unites (sic) per acre) and, land zoned for much higher economic use, and hence having higher market value, than land zoned 'Agriculture'—one unit per every 5 acres—as is established by Non-Comparables Map, (Exhibit B, annexed hereto and incorporated herein by this reference) which shows

the identifying assessment code, location, zoning and 1974 assessed value per acre of a score of parcels assessed far below the Lucom tract, yet having zoning for a much higher use. Plaintiff can not find any parcels so highly assessed as those which were the object of the conspiracy described in paragraph 6(a), supra.

"9. Plaintiff has been informed that there is no other unimproved land zoned 'agriculture' in the entire Palm Beach County which has been assessed at a value approaching $20,000.00 per acre for 1974, and believing same, so avers.

"10. As a further and telling example of the intentional, gross and invidious discrimination by defendant REID, REID appraised at $6,500.00 per acre for 1974 a parcel of acres in Century Village zoned RH (for eighteen units per acre having identifying assessment code 00-42-43-23-13-000-0021 and owned by Century Village, Inc. whose president is H. Irwin Levy, Esquire, who also advertises his firm Levy, Plisco, Perry, Reiter, and Shapiro as attorney for said Appraiser DAVID L. REID, and so acts (see Ex C, annexed, incorporated herein by this reference) and said appraiser's attorney Levy is under indictment in Dade County for alleged BRIBERY of zoning officials. (See Ex D, attached, and incorporated herein by this reference.)

"11. As another example of the gross discrimination against plaintiff in the subdivisions of Wellington, and other which are various states of development, there are these instances of 1974 assessed value of unimproved parcels thereof at a small percentage (like 2% or less) of the Lucom tract assessment, such as:

"(a) 535.89 acres at an assessed value of $311.20 per acre (which assessed value is less than the 1974 annual TAX on the Lucom tract). Assess-

ment identification code 00-41-44-18-00-000-9000, assessed value $160,700.67 or 50% of the appraised *market value* indicated on assessment roll of $321,-534.00. owner Lucille Wellington, et al trustees.

"(b) Also in Wellington, 365.58 acres with a 1974 assessed value of $146,282.00 or $400.00 per acre assessed value. Assessment identifying code 00-41-44-06-00-000-9000, owner Ibid.

"(c) For nearby Royal Palm Beach Colony, Inc., 426 Acres assessed at $142,800.00 or $335.00 per acre, and

"(d) Another example, 542.27 acres of land assessed at $162,771.00 or $300.00 per acre (code 00-41-44-0700-000-9000).

"12. The degree of gross discrimination against plaintiff being twenty times that of abutting and adjacent land similarly zoned and situated is so extreme as to make them in law a fraud and void.

"13. The Lucom tract at January 1, 1974 was in fact virtually unsaleable because of the illegal appropriation as a park (see paragraph 28, et seq, infra), and 1974 assessment is many times its just or market value on January 1, 1974.

"14. Upon learing (sic) of the 1974 Tax Bill for the Lucom tract, plaintiff has contacted the appraiser's office, providing it with maps (e.g. Ex. A and B, hereto), legal arguments and citations with the further developments in furtherance of the aforesaid conspiracy.

"(a) defendant STAHMAN prepared a report to cover up the conspiracy and attempt to justify same.

"(b) defendant REID, apparently joined by new co-conspirators, decided to refuse corrective adjustment of the illegal assessment on the grounds that (A) it would not be politically expedient for

him to do so and (B) on the feigned ground that he lacked authority (although it was called to his attention that subsequent to his certification of the tax rolls in November, 1974, he issued over 1685 certificates of correction many of which were for incorrect values assessed).

"(c) Defendant REID denies plaintiff a copy of, or access to the report identified in paragraph 14(a), supra.

"(d) Defendant REID refuses to justify or explain to plaintiff any basis on which the Lucom tract was assessed for 1974.

"(e) Defendant REID then caused to be sent to plaintiff letter attached as Ex C from said H. Irwin Levy, et al, falsely stating REID lacked authority to correct the Lucom assessment.

"15. As to judicial review in the Florida state courts, Florida Code section 194.171, as presently amended, reposes exclusive original jurisdiction at law in its circuit courts, but limits such action to 60 days after certification of rolls for collection, and makes a condition precedent the payment of tax which the taxpayer in good faith believes to be owing. The tender of said amount has been rejected (see Ex F, annexed, and incorporated herein by this reference).

"16. Although the appraiser has the continuing duty to correct, at any time, improper assessment, and defendant has so acted in over 1685 cases after certification of the 1974 assessment roll, (see paragraph 14(b), supra, he refuses to change the Lucom 1974 assessment even though he cannot justify it, and Florida law provides the aggrieved plaintiff no method of judicially forcing him, under these circumstances, to act, though leaving the appraiser sole arbitor of his granting or withholding corrective action.

"17. The 1974 Lucom tract assessment are (sic) (A) void as being made in violation of controlling law, (B) intentionally, grossly and outrageously discriminatory, and (C) violative of plaintiff's federal constitution rights under the Fourteenth Amendment to Equal Protection under law.

"18. Defendant Tax Collector ALLEN C. CLARK threatens and intends to sell the property for aforesaid taxes on or about May 30, 1975, per Ex G, attached and incorporated herein by reference.

"19. Plaintiff is without an adequate remedy at law and will be seriously and irreparably harmed if the aforesaid sale of May 30, 1975, (see paragraph 18, supra.), is not enjoined by this Court.

"20. Plaintiff is without a clear remedy, under the circumstances of this case, in the State Courts of Florida."

Whereas, the appraised value of the Lucom tract was thus set at $10,983,400 for 1974; it was reduced 70% for 1975, or $3,298,020 as was before the District Court (Appendix B, pages 17a, 18a and 19a), having been determined after the filing of the Complaint but tendered during the decisional process. This constitutes an implicit admission that the 1974 assessment was excessive by 70% or $7,685,400, a figure so gross both relatively and absolutely as to constitute fraud as a matter of law.

The FOURTH Count alleges that despite all of the foregoing, Appellee Reid, in whom a statutory discretion to correct 1974 assessments still reposes and which is not subject to judicial review but was used 1685 times for assessment year 1947 (para. 14 and 16 of Complaint (Appendix pages 7a and 8a), has refused

for political reasons (complaint para. 14(b) (A)), all in violation of 42 USC 1986.

The FIFTH Count incorporates all of the foregoing and asks that the assessment be declared void as violative of the equal protection clause of the federal constitution.

Each of the five counts seeks damages under 42 USC 1985 or 1986.

The District Court dismissed the entire Complaint on Appellees' Motion to Dismiss prior to answering, solely on the basis of lack of jurisdiction because of 28 USC 1341.

This case has not previously been before this court.

JURISDICTION

(a) Jurisdiction is founded on 28 USCA 1343 giving the District Court original jurisdiction in cases under 42 USCA 1985 and 1986.

(b) Additionally, jurisdiction is founded on diversity of citizenship and amount. Plaintiff is a citizen of the State of Maryland. All defendants are citizens of the State of Florida. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

(c) Additionally, jurisdiction is founded on the existence of a Federal question and the amount in controversy. The action arises under the Fourteenth Amendment of the Constitution of the United States as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

REASON FOR GRANTING THE WRIT

1. The order granting dismissal in this case is in conflict with the Third Circuit's opinion in *Bamford* v. *Garrett,* 538 F 2d 63 (reversing 394 F Supp. 902) (cert. den. 11/29/76) which reversed a district court's granting of a motion to dismiss a complaint alleging facts similar to those in this Lucom case.

Pertinent parts of the 3 CCA's decision in *Bamford, supra,* are:

> Since this case comes to us from a jurisdictional dismissal granted on defendants' motion pursuant to Fed. R. Civ. P. 12(b)(1), the only "facts" are the allegations of the complaint. These must be taken as true for the purposes of our review. *Walker, Inc.* v. *Food Machinery,* 382 U. S. 172, 174-5 (1965); *Curtis* v. *Everett,* 489 F. 2d 516, 518 (3d Cir. 1973), *cert. denied sub nom. Smith* v. *Curtis,* 416 U. S. 995 (1974).

Referring to 26 U.S.C. 1341, the CCA decision states:

> It thus appears that the statute had a twofold purpose: eliminating unfair advantage of foreign corporations over citizens of the state and eliminating the ability of foreign corporations interminably to withhold payment of local taxes and to disrupt local financing. See *Tramel* v. *Schrader,* 505 F. 2d 1310, 1315-6 (5th Cir. 1975); *Hargrave* v. *McKinney,* 414 F. 2d 320, 325-6 (5th Cir. 1969).
>
> An additional point is worthy of note. In his Senate floor discussion of the Tax Injunction Act, its chief sponsor, Senator Bone, introduced portions of the Judiciary Committee report on the prior Johnson Act, which applied similar retraints to federal injunctions against orders of state administrative agencies. Senator Bone stated that the following quotation was "applicable to

[the Tax Injunction Act] in the same manner that [it was] applicable to the Johnson bill." 81 Cong. Rec. at 1416 (1937).

"The wealthy individual or corporation is thus often enabled to wear out his opponent and compel him to settle or submit to an unjust judgment for the very reason that his opponent is not financially able to follow him through the tortuous and expensive route through the Federal court to the Supreme Court of the United States at Washington. *And all the time in this dispute there is no Federal question involved.* There is a dispute arising under a State statute or law of other origin and nothing more."

Id. at 1416 [emphasis supplied.] This concept from the Congressional Record, coupled with Congress' apparent concern to limit the ability of *foreign* corporations to use the *diversity* jurisdiction, at least suggests that Congress did not intend the Tax Injunction Act to bar federal courts from entertaining challenges to state taxes when such such challenges were based on federal law.

* * *

III

Under the 1973 Act, the inquiry into state remedies seeks to ascertain whether the state, in this case Pennsylvania, provides plaintiffs with a "plain, speedy, and efficient remedy" for adjudicating the claims alleged in their complaint. Supreme Court decisions construing this statutory language offer two essential points of guidance. First, although it can be argued that Congress meant to establish a more stringent standard for federal intervention, the decisions indicate that "plain, speedy and efficient" means no more than the prior equity standard of "adequacy". Second, it is sufficient for a finding of inadequacy that the availability of the state remedy be merely uncertain. Hart and

Wechsler, *supra,* note 7, at 979. *Spector Motor Service, Inc.* v. *O'Connor,* 340 U. S. 602, 605 (1951); *Township of Hillsborough* v. *Cromwell,* 326 U. S. 620 (1946); *Spector Motor Service, Inc.* v. *McLaughlin,* 323 U. S. 101 (1944).

* * *

This statutory remedy is clearly designed for an individual taxpayer to appeal his individual assessment.

* * *

Where legal remedies require multiple suits involving identical issues against the same defendant, federal equity practice has recognized the inadequacy of the legal remedy and has provided a forum. *Matthews* v. *Rodgers,* 204 U. S. 521, 529-30 (1932); *Hale* v. *Allinson,* 188 U. S. 56, 78 (1903). *See* 16 Minn. L. Rev. 679, 683 (1932).

* * *

A denial of a federal forum in the instant case would allow a state to depend upon burdensome piecemeal review procedures as an effective defense to an allegedly unconstitutional tax structure. Such a result would stand the legislative intent of section 1341 on its head.

2. The order of dismissal and its per curiam affirmance are so violative of the standard set by this Court as to require the exercise of its power of supervision.

It is axiomatic that "For purposes of ruling on a motion to dismiss for want to standing (or jurisdiction) both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party; e.g., *Jenkins* v. *McKeithen,* 395 U. S. 411, 421-2 (1969)." (parenthetic matter added); *Warth* v. *Seldin,* 422 U. S. 490, at 501-2.

F.R.C.P. 8(e)(2) provides "When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements." *A fortiori,* a separate count which is itself sufficient is not made insufficient by the insufficiency of a different count.

Thus, viewed separately the Second Count is totally unrelated to the bar of 28 U.S.C. 1341 in that it does not involve state taxation and it was clear error to dismiss it for that, the only ground stated.

Similarly, the *Fourth Count* is restricted to Appellee Reid's failure, in violation of 42 U.S.C. 1986 and for improper motives and arbitrarily, to exercise his statutory discretion to correct an implicitly admitted error (Appendix A, page 15a) while there is no judicial review available for his failure to so act. Whatever might be said as to the sufficiency of Florida law to meet the criteria required by 28 U.S.C. 1341, there is no Florida remedy for the arbitrary and discriminatory refusal, in violation of 42 U.S.C. 1986, to exercise this power and there is no corresponding judicial review. Hence, 28 U.S.C. 1341 is inapplicable and redress is appropriate under 42 U.S.C. 1986, and dismissal of the Fourth Count was error.

As to the THIRD Count which alleges that the Appellee Assessor Reid joined the conspiracy alleged in the Second Count and performed in bad faith all of the acts attributed to him and Appellee Stahman in Count One, clearly can not be used to exculpate all Appellees for this monstrous furtherance of their conspiracy, nor indeed can Appellees Reid and Stahman use 28 U.S.C.

1341 as a shield against 42 U.S.C. 1985 damages from a general conspiracy which went far afield from the purview of 28 U.S.C. 1341. Therefore, the District Court erred in dismissing said Third Count.

As to the First Count, standing alone, the Florida law fails to meet the criteria required by 28 U.S.C. 1341 as a prerequisite to its jurisdictional bar, namely, that (a) in the circumstances of this case there is no state remedy and (b) in its recently revised statutes and post-*Cosen* decisional law, infra, there is only a requirement of just value in assessment rather than the dual standard of just value and equality required by the controlling *Sioux City Bridge* case, 260 U. S. 441. Hence, dismissal of Count One was error.

Count Five for this same reason as Count One, was improperly dismissed. Trying to apply the two criteria essential for invoking 28 U.S.C. 1341, namely (a) availability of a "plain, speedy and efficient remedy" and (b) that each remedy sought is to "enjoin, suspend or restrain the assessment, levy or collection" of a state tax. As to criteria (a), supra, it clearly has no applicability to either the Second or Fourth Count, could have only theoretical applicability to the Third Count, and is in fact not available to the First Count because both Florida statutes and decisional law require only "just value" and not "equality" and make no remedy available for denial of the latter.

As to criteria (b), supra, it is totally inapplicable to the Second Count, and the Fourth Count which presumes that same do not occur. These criteria are of only limited applicability to part of relief sought under the remaining Counts.

3. This Court has not yet passed on the issue of whether a county may effectively confiscate realty by zoning it as a park.

This is the graveman of Count Two of the complaint and is ignored in the decision.

4. The recent decisions of the Supreme Court of Florida hold equality not necessary in real estate tax thus contradicting the standard of both fair and equal required by this Court in *Sioux City Bridge* v. *Dakota County,* 260 U. S. 441 at 446 thus undermining the constitutional requirements and precluding applicability of 28 U.S.C. 1341.

In *Spooner* v. *Askew,* 345 S. 2d 1055, decided 12/22/76 the Florida Court held:

> A taxpayer in Florida who is taxed at or under 100% of fair market value has never had standing to complain of an allegedly lower assessment level applied to taxpayers in another taxing unit. Neither *Salter* nor *Southern Bell* suggest otherwise. The problem in those cases, which the Court found both cognizable and remediable, came about "because the sworn official has not performed the duty requiring him to assess all property at its full cash value. The taxpayers in this case complain because their sworn official performed his responsibility too well.
>
> The mandate of "just valuation" derives from the Constitution. The requirement of statewide uniformity derives from statute. The latter is more a goal than a compellable right, and it would be naive to have expected instant statewide uniformity (assuming it can ever be achieved) merely because that goal had been announced by law. The Legislature commendably desired to create uniformity of assessments in Florida, but its ability

> to do so must remain conditioned by the Constitution's directive that a class of county officers are assigned the primary responsibility to perform assessment functions. At best the legislative goal can be achieved only incrementally through cooperative efforts of the assessors and the Department, and by the development of procedures which will accommodate the responsibilities of both. That these procedures had not evolved to the point of flawless harmony in 1973 was not a basis to conclude that Gadsden County taxpayers were denied equal protection of the law under either the Florida or federal Constitution.

Sioux City Bridge v. *Dakota County,* 260 U.S. 441, at 446, held:

> This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of true value and the uniformity and equality required by law, the law latter requirement is to be preferred as the just and ultimate purpose of the law.

Hillsborough v. *Cromwell,* 326 U.S. 260, holds that:

> The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment. He may not complain if equality is achieved by increasing the same taxes of other members of the class to the level of his own. The constitutional requirement, however, is not satis-

fied if a State does not itself remove the discrimination, but imposes on him against whom the discrimination has been directed the burden of seeking an upward revision of the taxes of other members of the class. *Sioux City Bridge Co.* v. *Dakota County,* 260 U.S. 441, 445-447; *Iowa Des Moines National Bank* v. *Bennett,* 284 U.S. 238, 247; *Cumberland Coal Co.* v. *Board of Revision,* 284 U.S. 23, 28-29.

It then discusses the jurisdiction of the New Jersey Board of Equalization and dismisses it as an adequate remedy because it could not grant reduction to comparables of one discriminated against but could only consider over-assessment of complainant's property as compared to full value. This remedy is dismissed as inadequate, and in the additional New Jersey remedy of right of suit to raise assessment of underassessed comparables is likewise dismissed as inadequate. (In this Lucom case that the Palm Beach County Board of Tax Adjustment similarly are restricted to only matters of overassessment of complainant's property as compared to full cash value see F.S.A. 194.032(1)(a), 194.011(3), and 193.011. Additionally, Florida has no procedure for our aggrieved property owner to seek upward revision of under assessed comparables.)

Hillsborough then stated:

"In any event, there is such uncertainty concerning the New Jersey remedy as to make it speculative (*Wallace* v. *Hines,* 253 U.S. 66, 68) whether the State affords full protection to the federal rights. In the second place, the state board of tax appeals to which respondent might have appealed concededly has *no right to pass on constitutional questions.*"

"Accordingly we conclude that there was such uncertainty surrounding the adequacy of the state remedy as to justify the District Court in retaining jurisdiction of the cause. While the charges of discrimination in the complaint were denied, *the jurisdiction of the District Court is determined by the allegations of the bill* (*Hart* v. *B. F. Keith Vaudeville Exchange,* 262 U.S. 271) which here were substantial.

"In the present case it appears that respondent's opportunity to appeal to the State Board of Tax Appeals had expired even before the District Court ruled on the motion to dismiss. And it is not clear that today respondent has open any adequate remedy in the New Jersey courts for challenging the assessments on local law grounds."

"Hence, the reason for holding the case in *Spector Motor Co.* v. *McLaughlin,* supra, and remitting the complainant to the state courts for determination of the local law question no longer was existent here.

"It follows *a fortiori* that the bill should not have been dismissed. As stated in *Greene* v. *Louisville & I.R. Co.,* 224 U.S. 499, 520, 'A remedy at law cannot be considered adequate, so as to prevent equitable relief, *unless it covers the entire case made by the bill in equity.*' Though the availability of a state remedy on the local law question be assumed to exist, so much uncertainty surrounds the New Jersey remedy to protect the taxpayer's federal right that a refusal to dismiss the bill was a proper exercise of discretion. Thus, however the case may be viewed, the exceptional circumstances which we have noted take it out of general rule of *Great Lakes Dredge & Dock Co.* v. *Huffman,* supra. The District Court, therefore, properly proceeded to decide the case on the merits. That it placed its decision on local law grounds is not ob-

jectionable. For it is well settled that where the federal court has jurisdiction, it may pass on the whole case and agreeably with the desired practice decide it on local law questions, without reaching the constitutional issues. *Siler* v. *Louisville & N.R. Co.,* 213 U. S. 175, 191, 193; *Greene* v. *Louisville I.R. Co.,* supra, p. 408; *Chicago G.W.R. Co.* v. *Kendall,* 266 U.S. 94, 97-98; *Risty* v. *Chicago, R. I. & P.R. Co.,* 270 U.S. 378, 387; *Waggoner Estate* v. *Wichita County,* 273 U.S. 113, 116; *Hurn* v. *Oursler,* 289 U.S. 238, 243-248." (emphasis added)

Controlling Florida Supreme Court cases deny reduction of an assessment below full cash value even where equality would require same.

In *Cosen Inv. Co., Inc.* v. *Overstreet,* 17 S.2d. 788, the Florida Supreme Court *En Banc,* renouncing the lower but equal principle, held:

"Appellant filed a bill against the Tax Collector of Dade County to enjoin the collection of a portion of the taxes assessed against its property upon the ground that its property had been assessed at its approximate cash value whereas other nearby property had been assessed at approximately seventy-five per cent of its cash value. From a decree dismissing the bill an appeal is taken. Appellant relies upon our opinion, *Camp Phosphate Co.* v. *Allen,* 77 Fla. 341, 81 S. 503. This case does not support appellant because, as was pointed out there, the purpose of the law was to render the tax burden uniform, equal and just and if all property was assessed at fifty per cent of its cash value the purpose of the law was carried out. Such logic is not now tenable because, by the adoption of Art. X, Sec. 7, to the Florida Constitution, homesteads to the extent of $5,000 are exempt from taxation.

"To perpetuate the practice of assessing all property at a less percentage than that directed by the statute (Chap. 20722, Acts 1941, F.S.A. § 193.11) would necessarily result in favoring the homesteads. The logic of the opinion in *Camp Phosphate Co.* v. *Allen,* supra, is no longer applicable because the reduced value, even though uniformly lower, is no longer just. Subsequent to the adoption of Art. X, Sec. 7, the practice of assessing property has been in conformity with the statute, that is at one hundred per cent of its true cash value.

"To grant appellant's request would require us to order a constitutional, official act contrary to the statute and by so doing the effect of his act would result in rendering unequal the tax burden to the taxpayers of Dade County.

"The decree is affirmed."

In *Dade Co.* v. *Salter,* 194 S. 2d. 587 the aforesaid *Cosen* opinion was reaffirmed, and even on rehearing when the *Sioux City Bridge* case, *supra,* was called to its attention, again reaffirmed *Cosen,* holding at p. 591.

> "In *Cosen Investment Co., Inc.* v. *Overstreet* 154 Fla. 416, 17 S. 2d. 788 (relied upon so heavily in the opinion), there was no allegation that *all of the property of the county* was assessed at less than its full cash value. The allegation there was that similar property was assessed at less value than plaintiff's property. There the Court correctly held under the facts there before us that 'to perpetuate the practice of assessing all property at a less percentage than that directed by statute . . . would necessarily result it favoring the homesteads.'"

Thus the status of the Florida Supreme Court reaffirmed law (En Banc) is that in this Lucom situation it would have to be alleged and "proven" in *Salter,* 194 S. 2d. 590, that *all others* were under-assessed to prevail in its action, although conceding at (ID. p. 591) that in *Sioux City, supra*), the U. S. Supreme Court held otherwise:

> "To adhere to the opinion which has been filed would require *these taxpayers,* and *other taxpayers who might find themselves in the same position in any of the sixty-seven counties in this State,* to successfully institute and prosecute proceedings to require the assessor to raise *all other* properties in the county to the statutory valuation, a burden which in most instances would amount to depriving the taxpayer of any remedy whatever, in order to obtain relief. This question was also considered by the Supreme Court of the United States in *Sioux City Bridge Co.* v. *Dakota County,* supra, where Mr. Chief Justice Taft, again speaking for the Court, said:
>
> '. . . The conclusion in these and other federal authorities is that such a result as that reached by the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all because it is utterly impossible for him by any judicial proceeding to secure an increase in the assessment of the great mass of underassessed property in the taxing district.' " (emphasis added)

Thus, as to that portion of the 1974 Lucom assessment below full cash value and above the range of assessed value of comparable properties, no cause of action would be recognized by the Florida Court unless plaintiff could establish that only her property out of the 200,000 parcels in Palm Beach County was assessed at full cash value. As the U. S. Supreme

Court said, supra, this "is to deny the injured taxpayer any remedy at all."

The aforesaid status of the Florida law is conducive to the type of "spot assessment" of a parcel selected for abuse as alleged, by a conspiracy to harass a property owner whose parcel has been earmarked for public use and, without any compensation is subjected to a campaign to frustrate *any* normal use of the property and subjected to discriminatory assessments twenty times that of similar and abutting properties—and leave the aggrieved property owner without any remedy.

The unconstitutional *Cosen* rule has been generally followed in Florida, e.g., *Sproul* v. *Royal Palm Yacht Club, Inc.,* 143 S. 2d. 900, a Palm Beach County case which held:

> "In its complaint the plaintiff alleged that several other pieces of property in the county similar to its property were assessed at a much lower valuation but nowhere in its complaint has the plaintiff alleged that its property is assessed in excess of its actual full cash value. The defendants filed a motion to dismiss the complaint but the court below denied the same, and hence this appeal.
>
> "The particular point presented in this interlocutory appeal is whether or not the complaint states a cause of action for injunctive relief in a challenge to the real estate assessment of the county tax assessor when it fails to allege that such assessment is in excess of the actual full cash value of the property.
>
> "The order of the lower court is reversed and the cause is remanded with direction for the entry of an order dismissing the complaint filed in this case."

In *Schooley* v. *Sunset,* 185 S. 2d. 1 at 4 the Second District, after struggling with the contradiction of controlling U. S. Supreme Court cases (e.g., *Sioux City Bridge, supra*)—and the unconstitutional holding of *Cosen, supra,* remanded a case for inconsistent disposition, and suggested, apparently in desperation over how to comply with the *Sioux City Bridge doctrine,* that maybe the taxpayer who had been assessed unequally high might be given a credit on future taxes. The decision spares us the torture of how such a relief might be lawfully done under present Florida statutes. Clearly, such tenuous and doubtful a remedy is not a "plain, speedy and efficient" remedy since it does violence to all related statutes. (See *Hillsborough* v. *Cromwell,* 326 U.S. 620 at 625 "In any event, there is such uncertainty concerning the New Jersey remedy as to make it speculative [*Wallace* v. *Hines,* 253 U.S. 66, 68] whether the State affords full protection to the federal rights").

The said *Schooley* v. *Sunset* case, *supra,* reads in pertinent part:

> "We are not unmindful of the decisions in *Cosen Inv. Co., Inc.* v. *Overstreet,* 154 Fla. 416, 17 S. 2d 788 (1944), and *Sproul* v. *Royal Palm Yacht & Country Club, Inc.,* 143 S. 2d 900 (D.C.A. Fla. 1962), which appear to hold that a taxpayer is entitled to no such relief under the circumstances of this case unless his property was assessed in excess of full cash value. In those cases, however, the constitutional question of equal protection was not raised nor was there any claim or *systematic, deliberate, and intentional* undervaluation of other property on a countywide basis as was made in the instant case."

> "The portion of the decree denying plaintiff any affirmative relief is therefore reversed and the cause remanded for the purpose of determining the best way to afford plaintiff relief for the past discrimination. We point out that to do this it is not necessary to void the 1963 tax roll or the roll of any subsequent year. *At least one acceptable method would be to allow plaintiff a credit against future taxes for the amount determined discriminatory for the year 1963.*" (emphasis added)

Controlling U.S. Supreme Court Cases uphold injunction where only inadequate, doubtful or uncertain remedy exists in state.

CONCLUSION

The complaint properly alleging confiscation of realty by zoning it as a park and related taxation at twenty times that of similar abutting land, plus Florida lack of equality in assessment cry out for review by this Court lest the practice spread.

The petition for certiorari should accordingly be granted.

Respectfully submitted,

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Washington, D.C. 20004

Attorney for Petitioner

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

(West Palm Beach Division)

VIRGINIA W. LUCOM, *Plaintiff*,

v.

DAVID L. REID, as Property Appraiser (formerly Tax Assessor) of Palm Beach County, Florida; ALLEN C. CLARK, as Tax Collector of Palm Beach County, Florida; J. ED STRAUGHN, as Executive Director, Florida Department of Revenue; DAVID L. REID; CHARLES H. STAHMAN; CCLONEL E. W. EFFINGER; MICHAEL C. SMALL; ROBERT JOHNSON; ROBERT CULPEPPER; ALAN CIKLIN, *Defendants.*

Civil Action No. .....

Complaint for

(A) Damages Resulting from Denial Under Color of Law of U.S. Constitutional Equal Protection

(B) Enjoining of Tax Sale Under Void Assessment unauthorized by law

(C) Enjoining Further Harassment in Normal use of Private Realty For uses other than Public Land or Park

(D) Declaratory Relief and

(E) Injunction to Assess According to Law

(Filed April 28, 1975)

Complaint

JURISDICTION

1. (a) Jurisdiction is founded on 28 USCA 1343 giving this Court original jurisdiction in cases under 42 USCA 1985 and 1986, as hereinafter appears.

(b) Additionally, jurisdiction is founded on diversity of citizenship and amount. Plaintiff is a citizen of the State of Maryland. All defendants are citizens of the State of Florida. The matter in controversy, exceeds exclusive of interest and costs, the sum of ten thousand dollars.

(c) Additionally, jurisdiction is founded on the existence of a Federal question and the amount in controversy. The action arises under the Fourteenth Amendment of the Constitution of the United States as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

THE PARTIES

2. The plaintiff, VIRGINIA W. LUCOM, a citizen of the State of Maryland, brings this action as a private citizen over matter arising out of her ownership of about 545 acres of land situated in Palm Beach County, State of Florida.

3. Defendants.

(a) DAVID L. REID, as Property Appraiser (formerly Tax Assessor) of Palm Beach County, Florida;

(b) ALLEN C. CLARK, as Tax Collector of Palm Beach County, Florida;

(c) J. ED STRAUGHN, as Executive Director, Florida Department of Revenue;

(d) DAVID L. REID, individually, acting under color of law as Property Appraiser (formerly Tax Assessor) of Palm Beach County, Florida;

(e) CHARLES H. STAHMAN, acting under color of law as Supervisor, Land Department, Office of Property Appraiser (formerly Tax Assessor) Palm Beach County, Florida;

(f) COLONEL E. W. EFFINGER, acting under color of law as County Palnner for Palm Beach County, Florida;

(g) MICHAEL B. SMALL, acting under color of law as former County Attorney for Palm Beach County, Florida;

(h) ROBERT JOHNSON, acting under color of law as County Commissioner for Palm Beach County, Florida;

(i) ROBERT CULPEPPER, acting under color of law as County Commissioner for Palm Beach County, Florida;

(j) ALAN CIKLIN, acting under color of law as former Assistant County Attorney for Palm Beach County, Florida.

FIRST COUNT

(Defendant REID, under color of law has conspired with others to defraud plaintiff of over $240,000.00 for 1974 by an illegal, void, and grossly discriminatory assessment twenty times more than comparable property in violation of 42 USC 1985.)

4. Plaintiff realleges paragraphs 1, 2, and subparts (a), (b), (d), and (e) of paragraph 3, above.

5. Defendant DAVID REID under color of law, intentionally, invidiously grossly and arbitrarily discriminated against plaintiff by illegally spot re-assessing unequally her 545 acres of unimproved land, zoned "agriculture", from approximately $490,000.00 (or about $890.00 per acre) for a property tax of about $13,000.00 for 1973, to a 1974 assessed value of $10,993,400.00 at a 1974 property tax of $263,353.73, an increase in assessed value of about twenty-two times, or about $10,500,000.00 more assessed value without any change in zoning or present use, thus

using a discrimination so gross as to amount in law to be a fraud whereby plaintiff will be defrauded out of over $240,000.00 for 1974 property tax in violation of her federal constitutional right of equal protection under law and in violation of 42 USC 1985 by his conspiracy with others in its accomplishment as hereinafter alleged. Scores of parcels of abutting adjoining or nearby land, with identical zone and use, are uniformly assessed in a range for 1974 assessment of $800.00 to $1,200.00 per acre (per Ex. A, attached map, incorporated herein by this reference) or about one twentieth of that of plaintiff's land.

6. (a) During the latter part of 1973 and during 1974 defendant CHARLES STAHMAN conspired with defendant DAVID L. REID and others presently unknown to plaintiff to specially re-assess in a grossly discriminatory and outrageously unequal basis, as a class, only the newly annexed land on the west side of the Town of Greenacres City, in furtherance of which plan, and under color of law, defendant did raise the assessment of the Lucom tract by over twenty times, without properly notifying the plaintiff.

(b) The Town of Greenacres City was not generally re-assessed for 1974 assessed value.

(c) Other parcels in the County abutting, contiguous to, or in close proximity to the Lucom tract which were zoned "agriculture" were not re-assessed as part of the special discriminatory re-assessment alleged in paragraph 6 (a), supra.

7. The Lucom tract 1974 assessed value of about $20,-000.00 per acre (see paragraph 5, supra.) is about twenty times that of abutting, contiguous, adjoining and all nearby acres similarly zoned agriculture as is established from Map of Comparables, (Ex A, annexed hereto and incorporated herein by this reference) which shows the assessment code, location, and 1974 assessed value per acre of

dozens of comparable and similarly zoned "agricultural" parcels surrounding the Lucom tract. The gross disparity of twenty to one is the result of an intentional plan and system to invidiously discriminate against the plaintiff and the aforesaid conspiracy to thus deprive her of equal protection under law by virtue of manner in which said defendant REID administers same.

8. The Lucom tract 1974 assessed value of about $20,-000.00 per acre (see paragraph 5, supra.) is about five to ten times that of acreage located in Greenacres and zoned R-2 (up to fifteen dwelling unites per acre) and, land zoned for much higher economic use, and hence having higher market value, than land zoned "Agriculture"—one unit per every 5 acres—as is established by Non-Comparables Map, (Exhibit 8, annexed hereto and incorporated herein by this reference) which shows the identifying assessment code, location, zoning and 1974 assessed value per acre of a score of parcels assessed far below the Lucom tract, yet having zoning for a much higher use. Plaintiff can not find any parcels so highly assessed as those which were the object of the conspiracy described in paragraph 6 (a), supra.

9. Plaintiff has been informed that there is no other unimproved lond zoned "agriculture" in the entire Palm Beach County which has been assessed at a value approaching $20,000.00 per acre for 1974, and believing same, so avers.

10. As a further and telling example of the intentional, gross and invidious discrimination by defendant REID, REID appraised at $6,500.00 per acre for 1974 a parcel of acres in Century Village zoned RH (for eighteen units per acre having identifying assessment code 00-42-43-23-13-000-0021 and owned by Century Village, Inc. whose president is H. Irwin Levy, Esquire, who also advertises his firm Levy, Plisco, Perry, Reiter, and Shapiro as attorney

for said Appraiser DAVID L. REID, and so acts (see Ex C, annexed, incorporated herein by this reference) and said appraiser's attorney Levy is under indictment in Dade County for alleged BRIBERY of zoning officials (see Ex D, attached, and incorporated herein by this reference.)

11. As another example of the gross discrimination against plaintiff in the subdivisions of Wellington, and other which are various states of development, there are these instances of 1974 assessed value of unimproved parcels thereof at a small percentage (like 2% or less) of the Lucom tract assessment, such as:

(a) 535.89 acres at an assessed value of $311.20 per acre (which assessed value is less than the 1974 annual TAX on the Lucom tract). Assessment identification code 00-41-44-18-00-000-9000, assessed value $160,700.67 or 50% of the appraised *market value* indicated on assessment roll of $321,534.00, owner Lucille Wellington, et al trustees.

(b) Also in Wellington, 365.58 acres with a 1974 assessed value of $146,282.00 or $400.00 per acre assessed value. Assessment identifying code 00-41-44-06-00-000-9000, owner Ibid.

(c) For nearby Royal Palm Beach Colony, Inc., 426 acres assessed at $142,800.00 or $335.00 per acre, and

(d) An other example, 542.57 acres of land assessed at $162,771.00 or $300.00 per acre (code 00-41-44-0700-000-9000).

12. The degree of gross discrimination against plaintiff being twenty times that of abutting and adjacent land similarly zoned and situated is so extreme as to make them in law a fraud and void.

13. The Lucom tract at January 1, 1974 was in fact virtually unsaleable because of the illegal appropriation as a park (see paragraph 28, et seq., infra), and 1974

assessment is many times its just or market value of January 1, 1974.

14. Upon learning of the 1974 Tax Bill for the Lucom tract, plaintiff has contacted the appraiser's office, providing it with maps (e.g. Ex A and B, hereto), legal arguments and citations with the further developments in furtherance of the aforesaid conspiracy.

(a) defendant STAHMAN prepared a report to cover up the conspiracy and attempt to justify same

(b) defendant REID, apparently joined by new co-conspirators, decided to refuse corrective adjustment of the illegal assessment on the grounds that (A) it would not be politically expedient for him to do so and (B) on the feigned ground that he lacked authority (although it was called to his attention that subsequent to his certification of the tax rolls in November, 1974, he issued over 1685 certificates of correction many of which were for incorrect values assessed).

(c) Defendant REID denies plaintiff a copy of, or access to the report identified in paragraph 14 (a), supra.

(d) Defendant REID refuses to justify or explain to plaintiff any basis on which the Lucom tract was assessed for 1974.

(e) Defendant REID then caused to be sent to plaintiff letter attached as Ex C from said H. Irwin Levy, et al, falsely stating REID lacked authority to correct the Lucom assessment.

15. As to judicial review in the Florida state courts, Florida Code section 194.171, as presently amended, reposes exclusive original jurisdiction at law in its circuit courts, but limits such action to 60 days after certification of rolls for collection, and makes a condition precedent the payment of tax which the taxpayer in good faith believes to be owing. The tender of said amount has been

rejected (see Ex F, annexed, and incorporated herein by this reference).

16. Although the appraiser has the continuing duty to correct, at any time, improper assessment, and defendant has so acted in over 1685 cases after certification of the 1974 assessment roll, (see paragraph 14 (b), supra, he refuses to change the Lucom 1974 assessment even though he cannot justify it, and Florida law provides the aggrieved plaintiff no method of judicially forcing him, under these circumstances, to act, though leaving the appraiser sole arbitor of his granting or withholding corrective action.

17. The 1974 Lucom tract assessment are (A) void as being made in violation of controlling law, (B) intentionally, grossly and outrageously discriminatory, and (C) violative of plaintiff's federal constitution rights under the Fourteenth Amendment to Equal Protection under law.

18. Defendant Tax Collector ALLEN C. CLARK threatens and intends to sell the property for aforesaid taxes on or about May 30, 1975, per Ex G, attached and incorporated herein by reference.

19. Plaintiff is without an adequate remedy at law and will be seriously and irreparably harmed if the aforesaid sale of May 30, 1975, (see paragraph 18, supra.), is not enjoined by this Court.

20. Plaintiff is without a clear remedy, under the circumstances of this case, in the State Courts of Florida.

21. The aforesaid acts of defendants REID and STAHMAN are compensible under 42 USC 1985 as a conspiracy to deprive plaintiff of equal protection under state law in deprivation of her rights under the federal constitution, and plaintiff has been damaged by said defendants' acts to the extent of two million dollars ($2,000,00.00).

22. Plaintiff, during 1952, bought for about $55,000.00, approximately 545 acres of unimproved contiguous real estate situated in Palm Beach County and located west of Jog Road and both North and South of Forest Hill Blvd. in said county. No improvements have been made to or upon Plaintiff's said land and it remains in a natural unimproved state and no provisions have been made for utility services, such as water and sewer for said land.

23. For the Florida Property Assessment year 1973, with a tax day of January 1, 1973, the entire aforesaid Lucom tracts were assessed at a value of approximately $490,000.00, or approximately $890.00 per acre.

24. For the Assessment year 1974, with a tax day of January 1, 1974, the same entire aforesaid Lucom tracts were assessed at a value of $10,993,400.00, of approximately $20,000.00 per acre.

25. Plaintiff received no notice of increase from prior years assessed valuation for 1974 assessment, and she first learned of same from tax bill sent her late in 1974.

26. At all times here pertinent (and plaintiff verily believes ever isnce her acquisition in 1952), and certainly on the tax days of January 1, 1973 and January 1, 1974, the aforesaid Lucom tracts were and are zoned "Agriculture" and accordingly on said 1973 and 1974 tax days as well as now restricted to one dwelling unit for every five acres.

27. The aforesaid Lucom tracts produce no income for plaintiff.

28. On or about December 7, 1952, the Palm Beach County Area Planning Board, without notice to the plaintiff, adopted and caused to be published its official land Map, (see Ex E, annexed, and incorporated herein by this reference) classifying most of the aforesaid Lucom tracts for institutional use. To date no one has offered to compensate the plaintiff for such dedications, presently or prospectively.

29. On or about October 8, 1973, plaintiff caused said Lucom tracts to be annexed into the abutting Town of Greenacres City but specifically retaining the "Agriculture" zoning and development restrictions aforesaid, in paragraph 5, supra, (see Greenacres Ordinances # 154 and # 153 and development zoning restrictions of one dwelling for each five acres attached as Ex H and I, respectively).

30. During 1973 various officials of Palm Beach County illegally under color of law and privately opposed denounced and criticized the aforesaid annexation (see e.g., Ex J, K, L, and M annexed and incorporated herein by this reference).

31. During 1973 various officials of Palm Beach County under color of law and privately (see e.g., Ex J, K, L, M, and N, annexed and incorporated herein by this reference) prevented or caused to be denied any zoning change for the aforesaid Lucom tracts by (a) public denounciation (b) threats of reprisal (c) institution of injunction suit (d) intimidation (e) promising under color of law, to overrule any zoning change by referring same on the county's motion to the South Florida Regional Planning Council as an area of Regional Impact under an improper and illegal interpretation of the legal standard for reference (which would require an expenditure of many thousands of dollars by plaintiff for studies and plans and delays of years) and (f) generally, by any means at their disposal to impede and frustrate any use of the Lucom tract for other than park or public institutional use as assigned it on the aforesaid Land Use Plan.

32. Defendant STRAUGHN is hereby joined in this action for his failure to properly supervise defendant REID, as required by law, and as principal revenue official of the State of Florida.

33. Delay of the threatened tax sale (see paragraph 18, supra.) will in no wise harm the taxing communities or jeopardize collection as the disputed assessment will remain as a well secured first lien on the otherwise unencumbered valuable Lucom tract.

WHEREFORE, under the First Count, plaintiff demands that this Court

(A) enjoins the threatened tax sale described in paragraph 18, supra., pendente lite, and permanently,

(B) award plaintiff damages in the amount of two million dollars ($2,000,000.00) against defendants REID and STAHMAN (and any other defendants herein found to be co-conspirators with them under the facts alleged) with costs, plus an additional one million dollars ($1,000,000.00) punitive damages.

(C) declare void the 1974 assessment of the Lucom tract described in paragraph 5, supra., and

(D) issue its affirmative injunction to defendant Appraiser REID to issue his certificate of correction to bring the aforesaid 1974 Lucom tract assessment in parity with comparable parcels shown on Comparable Map (Ex A, attached) and

(E) grant to plaintiff such other and further relief, legal and equitable as is meet under these premises.

SECOND COUNT

(Various Defendants have conspired to effect a partial taking of Plaintiff's Property, under color of law, be arbitrarily classifying it as a park, without compensation, in violation of 42 USC 1985.)

34. Paragraphs 1, 2, 3f, 3h, 3i, 3j, 28 an. 29 all supra., are incorporated herein by this reference.

35. During 1973 various officials of Palm Beach County, to wit: defendants, SMALL, EFFINGER, CIKIN, JOHNSON, and CULPEPPER, under color of law and privately opposed denounced and criticized the aforesaid annexation (see e.g., Ex J, K, L, and M, annexed and incorporated herein by this reference), in a conspiracy to defeat same.

36. During 1973 the same (paragraph 35, supra.) officials of Palm Beach County illegally under color of law and privately (see e.g., Ex J, K, L, and M, annexed and incorporated herein by this reference) conspired to prevent or cause to be denied any zoning change for the aforesaid Lucom tracts by (a) public denounciation (b) threats of reprisal (c) institution of injunction suit (d) intimidation (e) promising under color of law, to overrule any zoning change by referring same on the county's motion to the South Florida Regional Planning Council as an area of Regional Impact under an improper and illegal interpretation of the legal standard for reference (which would require an expenditure of many thousands of dollars by plaintiff for studies and plans and delays of years) and (f) generally, by any means at their disposal to impede and frustrate any use of the Lucom tract for other than park or public institutional use as assigned it on the aforesaid Land Use Plan.

37. Particular overt acts of certain said defendants in furtherance of their conspiracy are as follows:

(a) As to defendants SMALL and EFFINGER each appeared, under color of law, at a meeting of the Town Council of the Town of Greenacres City, Florida, on June 25, 1973 and improperly opposed annexation of the Lucom tract, as did defendant CILKIN on November 20, 1973 improperly but successfully oppose rezoning.

(b) As to defendants JOHNSON and CULPEPPER each while a member of the Board of County Commissioners, public opposed said annexation of the Lucom tract as a violation of the Land Use Plan and threatened reprisals

against those involved, and were members of the South Florida Regional Planning Council.

38. The objectives of the conspiracy alleged in this Count are those of

(a) dedicating the Lucom tract effectively to only public use without compensation in violation of the federally protected equal protection clause of the Fourteenth Amendment as well as the eminent domain requirement thereunder

(b) frustrate any normal use or development of the Lucom tract which would enhance its value

(c) harass by excessive assessment and other misuse of law any use or retention in private hands of the Lucom tract, and

(d) depress its value by such illegal acts under color of law.

WHEREFORE, under this Second Count, plaintiff demands that this Court

(A) award plaintiff damages in the amount of two million dollars ($2,000,000.00) against defendants SMALL, EFFINGER, CIKLIN, JOHNSON, and CULPEPPER (and any other defendants herein found to be co-conspirators with them under the facts alleged) with costs, plus an additional one million dollars ($1,000,000.00) punitive damages.

(B) This Court enjoin defendants herein from continuing the conspiracy and requiring correction of the Land Use Map.

THIRD COUNT

(Conspiracy of Second Count is joined by Conspiracy of First Count in Common illegal objectures, in violation of 42 USC 1985.)

39. Paragraphs 1-38 inclusive are incorporated herein by this reference.

40. The aforesaid conspiracy alleged in paragraph 6, supra, was in fact in furtherance and joining of the conspiracy alleged in paragraph 38, supra, which was then in progress.

WHEREFORE, under this Third Count, plaintiff demands that this Court

(A) enjoins the threatened tax sale described in paragraph 18, supra., pendente lite, and permanently,

(B) award plaintiff damages in the amount of two million dollars ($2,000,000.00) against defendants REID, STAHMAN, EFFINGER, SMALL, JOHNSON, CULPEPPER and CIKLIN (and other defendants herein found to be co-conspirators with them under the facts alleged) with costs, plus an additional one million dollars ($1,000,00.00) punitive damages

(C) declare void the 1974 assessment of the Lucom tract described in paragraph 5, supra., and

(D) issue its affirmative injunction to defendant Appraiser REID to issue his certificate of correction to bring the aforesaid 1974 Lucom tract assessment in parity with comparable parcels shown on Comparable Map (Ex A, attached) and

(E) grant to plaintiff such other and further relief, legal and equitable as is meet under these premises.

FOURTH COUNT

(Defendant REID, having power to prevent further damages to plaintiff by issuing a Certificate of Correction, refuses to do so, in violation of 42 USC 1986.)

41. Paragraphs 1, 2, 3a, 3d, 5-40 inclusive are incorporated herein by this reference.

42. Defendant REID being thus apprised of the circumstances constitution a deprivation of the equal protection

of the laws to the plaintiff as a consequence of the aforesaid conspiracy, and having the power to prevent or aid in the preventory the same, by issuing a certificate of correction or otherwise, defendant REID neglects and refuses to do so, as a consequence plaintiff has been damaged and will continue to be damaged in a manner which could have been prevented by the exercise of reasonable diligence by defendant REID, and said damage to plaintiff and her Lucom tract are in the amount of two million dollars ($2,000,000.00). Said refusal to act occurred within one year of filing this Complaint.

43. Under 42 USCA 1986, defendant REID is liable for the damages alleged in paragraph 42, supra.

WHEREFORE, plaintiff demands under this Fourth Count that this Court

(A) award plaintiff damages in the amount of two million dollars ($2,000,000.00) against defendant REID (and any other defendants herein found to be co-conspirators with them under the facts alleged) with costs, plus an additional one million dollars ($1,000,000.00) punitive damages.

(B) grant to plaintiff such other and further relief, legal and equitable as is meet under these premises.

FIFTH COUNT

(Assessments are void as in violation of Federal Constitution Guarantee of Equal Protection under law, and sole procedure thereunder must be enjoined.)

44. Paragraphs 1b, 1c, 2, 3a, 3b, 3c, 4-40 inclusive are incorporated herein by this referance.

WHEREFORE, under this Fifth Count, plaintiff demands that this Court

(A) enjoins the threatened tax sale described in paragraph 18, supra., pendente lite, and permanently,

(B) award plaintiff damages in the amount of two million dollars ($2,000,000.00) against defendants REID and STAHMAN (and any other defendants herein found to be co-conspirators with them under the facts alleged) with costs, plus an additional one million dollars ($1,000,000.00) punitive damages.

(C) declare void the 1974 assessment of the Lucom tract described in paragraph 5, supra, and

(D) issue its affirmative injunction to defendant Appraiser REID to issue his certificate of correction to bring the aforesaid 1974 Lucom tract assessment in parity with comparable parcels shown on Comparable Map (Ex A, attached) and

(E) grant to plaintiff such other and further relief, legal and equitable as it meet under these premises.

Respectfully submitted,

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APPENDIX B

(CAPTION OMITTED IN PRINTING)

(FILED JULY 7, 1975)

Plaintiff's Supplemental Points and Authorities in Opposition to Various Pending Motions by Defendants

A. Assessed Value Reduced By 70%.

Attached are copies of the Appraiser's Notice of Appraised Value received in June, 1975 by plaintiff covering the nine continuous parcels at issue in this suit.

The appraised value is tabulated as follows from figures appearing thereon:

1974	1975
$ 2,560,000	$ 768,000
658,000	197,400
1,200,000	360,000
1,360,000	408,000
752,600	225,780
90,000	30,000
540,000	162,000
940,000	282,000
2,882,800	864,840
$10,983,400	$ 3,298,020

B. Reduction By 70% In 1975 Proves 1974 Assessed Value Was Illegally High.

The Court can judicially note the publicized fact the appraised values in Palm Beach County has increased greatly from 1974 to 1975. The status of the Lucom tract has not changed and the fact that the Appraiser has seen fit to lower the appraised value by $7,685,380 is a bland admission that the 1974 appraisal was excessive by at least that amount.

However, as established by the Comparables Map, attached to the Complaint as Exhibit A, the 1974 appraisal was actually excessive by not 70% thereof but rather about 95% thereof. Thus the 1974 appraisal of $10,983,400 should have been $549,170 approximately.

Plaintiff verily believes the 1975 appraisal is still excessive under controlling law.

C. Legend On Appraiser's Notification Cards Admits There Is No Constitutionally Required Remedy In Florida From Appraisal Which Are Unequally High.

Referring to the issue discussed in part 2, from page 4 through 16 of plaintiff's memorandum filed May 27, 1975 and again part 2 through page 5 through 8 of her memorandum filed June 3, 1975 namely that 28 U.S.C. 1341 is no bar to ancillary injunctive relief in this case because the State of Florida presently provides no relief from *unequally* high assessments as distinguished from unjustly high as compared to fair market value. The *Sioux City Bridge* principle (260 U.S. 441) requires both protections and holds that if there is a conflict between them, the equality requirement should prevail.

What could be clearer than that the legend on the aforesaid card? The present Florida situation is precisely that which was denounced in the *Sioux City* case, supra, and *Hillsboro* case (326 U.S. 620).

With this admission, 28 U.S.C. 1341 is totally inapplicable and on the facts established by Ex. A, the Comparable Map the Lucom 1974 assessment is clearly violative of the federal constitution.

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(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

APPENDIX C

(CAPTION OMITTED IN PRINTING)

(FILED JULY 24, 1975)

Order

BACKGROUND

The plaintiff, a citizen of Maryland, owns approximately 545 acres of land situated in Palm Beach County, Florida. In 1973, the property was assessed at approximately $490,000.00, resulting in a property tax of some $13,000.00. In 1974, the property was reassessed at $10,993,400.00, resulting in a tax of $263,353.73. The increase in assessed taxes from 1973 to 1974 is thus some $250,000.00.

The plaintiff has brought this action under the civil rights statutes, alleging in five counts as follows: Count One, a conspiracy to defraud plaintiff by a grossly discriminatory assessment in violation of 42 U.S.C. § 1985; Count Two, a conspiracy to effect a partial taking of plaintiff's property without compensation by arbitrarily classifying it as a park, in violation of 42 U.S.C. § 1985; Count Three, that the conspiracy of the second count is joined by the conspiracy of the first count in common illegal objectives in violation of 42 U.S.C. § 1985; Count Four, that defendant Reid, property appraiser of Palm Beach County, refuses to prevent further damages to plaintiff by issuing a Certificate of Correction in violation of 42 U.S.C. § 1986; and Count Five, that the assessments are void as in violation of the federal constitutional guarantee of equal protection under the law. As relief, the plaintiff seeks to enjoin the tax sale of the property, the award of damages, declaratory relief and further injunctive relief.

THE APPLICABILITY OF 28 U.S.C. § 1341, THE TAX INJUNCTION ACT

The defendants argue vigorously that the Tax Injunction Act of 1937, 28 U.S.C. § 1341, bars the prosecution of this lawsuit in federal court. The plaintiff contends, equally strenuously, that this action is not primarily a suit for tax injunction, but is rather a civil rights action seeking damages for an alleged conspiracy in violation of plaintiff's federal constitutional rights.

The Tax Injunction Act, 28 U.S.C. § 1341, provides as follows:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

The inquiry as to the applicability of the above statute is two-pronged: the first question is whether the suit is one to "enjoin, suspend or restrain the assessment, levy or collection" or a state tax; and the second question, if the first is answered in the affirmative, is whether there is a "plain, speedy and efficient remedy" in the state courts. Title 28 U.S.C. § 1341 is a jurisdictional bar to the maintenance in federal courts of actions which come within its meaning; thus, if applicable, it will bar the prosecution of the instant suit and the defendants' motions to dismiss must be granted. *Hargrave* v. *McKinney*, 413 F.2d 320 (5th Cir. 1969).

In ascertaining whether this suit is one to "enjoin, suspend or restrain the assessment, levy or collection" of a state tax, it is appropriate to examine the complaint to determine the essential nature of the claim. *Beard* v. *Stephens*, 377 F.2d 685 (5th Cir. 1967). It is clear that the mere allegation that the primary nature of a claim is a civil rights suit rather than a tax injunction suit will not prevent 28

U.S.C. § 1341 from divesting the Court of jurisdiction. *Hickmann* v. *Wujick,* 488 F.2d 875 (2d Cir. 1973); *Bland* v. *McHann,* 463 F.2d 21 (5th Cir. 1972); *Bussie* v. *Long,* 383 F.2d 766 (5th Cir. 1967); *Kimmey* v. *H. A. Berkheimer,* 376 F.Supp. 49 (E.D. Pa. 1974); *Evangelical Catholic Communion, Inc.* v. *Thomas,* 373 F.Supp. 1342 (D. Ver. 1973).

The *Bland* v. *McHann* case, *supra,* involved a suit brought under the civil rights statutes by Negroes who claimed that the assessed valuation of their properties had been discriminatorily increased in retaliation for peaceful protests against alleged racial discrimination. In holding that 28 U.S.C. § 1341 barred prosecution of the action in federal court, the Fifth Circuit stated:

> It is well established that § 1341 is an explicit congressional limitation on the jurisdiction of the federal courts in cases which would enjoin, suspend or restrain state tax levy, assessment or collection. Taxpayers seek to circumvent § 1341 by arguing that relief under § 1983 is supplemental and is not limited to any require of exhaustion of state remedies. We do not disagree with the general rule that exhaustion is not required in § 1983 cases; however, in this case § 1983 collides full force with a specific congressional limitation on federal jurisdiction. In such circumstances we are convinced that § 1341 must prevail.

Bland v. *McHann, supra,* p. 24. The Court went on to note that, where the state offers a plain, adequate and complete remedy, it is the duty of the federal court to remit the taxpayers to state court. *Id,* p. 26.

In the case of *Kimmey* v. *Berkheimer,* 376 F.Supp 49 (E.D. Pa. 1974), plaintiffs brought suit under the civil rights statutes, challenging the constitutionality of certain sections of the state tax law which authorized local tax collectors to distrain personal property of delinquent tax-

payers prior to a hearing or an adjudication relative to liability for the taxes. The Court, citing with approval the *Bland* v. *McHann* case, *supra,* held that the statutory prohibition of § 1341 cannot be avoided merely by framing the complaint as a request for declaratory relief, and further stated that "where jurisdiction is circumscribed by § 1341, premising the Court's power on 42 U.S.C. § 1983 and its jurisdictional analogue, 28 U.S.C. § 1343, will not compel a contrary result." *Kimmey* v. *Berkheimer, supra,* p.53.

The *Bland* v. *McHann* and *Kimmey* v. *Berkheimer* cases are closely analogous to the instant action. In both cases, as in this one, plaintiffs brought their actions under the civil rights statutes. In both cases, the Courts held that where the civil rights statutes collide with § 1341, § 1341 must prevail. Although the plaintiff in the instant cause contends that the thrust of her complaint is a civil rights action, it is readily apparent upon examination of the complaint that the entire controversy centers around an allegedly void tax assessment, with both injunctive and declaratory relief sought. Calling the complaint a civil rights action cannot conceal the fact that this entire action is inextricably intangled with Florida's tax law. Where that is true, federal courts are statutorily mandated by § 1341 to follow a policy of positive nonintervention with the state taxation processes. The plaintiff here seeks both injunctive relief against the county tax authorities, in addition to declaratory relief; this case is essentially one to "enjoin, suspend or restrain the assessment, levy, or collection of a state tax. Clearly, the reasoning of the *Bland* v. *McHann* and *Kimmey* v. *Berkheimer* cases is applicable to this lawsuit, and the first requirement of the two-pronged § 1341 test has been met.

It should be noted that, while the plaintiff seeks to avoid the § 1341 jurisdictional bar by contending that § 1341 cannot be a bar to an action seeking money damages, plaintiff's position is untenable. In the case of *Evangelical Catholic Communion, Inc.* v. *Thomas,* 373 F.Supp. 1342 (D. Ver.

1973), the Court in a well-reasoned opinion disposed of the identical issue by stating:

> Finally, the plaintiffs seek additional damages totaling $150,000.00. It is elementary that constitutional rights must be found to have been abridged in order for damages to be recovered in a civil rights action. Thus the plaintiffs in this action cannot recover damages without a determination by this court that the taxation of their Newbury property was effected in violation of their constitutional rights. If we were to make such a determination, we would, in effect, be issuing a declaratory judgment regarding the constitutionality of the tax levied on the plaintiffs. As the court is prohibited from issuing such a declaratory judgment, as indicated earlier, the court is also precluded as a matter of law from adjudicating the plaintiffs' damages claims.

Evangelical Catholic Communion, Inc. v. *Thomas, supra,* p. 1344. This reasoning is dispositive of the question of whether a prayer for damages will avoid the § 1341 jurisdictional bar otherwise applicable to a lawsuit.

Having answered the first inquiry in the affirmative, the final § 1341 question becomes whether there is a plain, speedy and efficient remedy in the state courts. This inquiry must likewise be answered affirmatively.

Chapter 194 of the Florida Statutes provides for "Administrative and Judicial Review of Property Taxes." Section 194.011 provides that notice of an assessment increase shall be given to each person subjected to the tax, and provides that anyone objecting to the assessment may file a petition opposing the assessment. Section 194.015 provides for a board of tax adjustment, and section 194.032 provides for the procedure to be followed by the board in hearing complaints. Section 194.042 provides for further administrative challenge to the assessment. Section 194.171 gives to the state Circuit Courts original jurisdiction of all matters at law pertaining to property taxation. Section

194.211 provides that an injunction may issue to restrain the sale of real property for any tax which appears to be contrary to law or equity. Clearly, Florida law provides for a plain, speedy and efficient remedy which can be had in state courts. Indeed, the Fifth Circuit has previously held that Florida provides a "plain, speedy and efficient remedy" within the meaning of § 1341. *Carson* v. *City of Ft. Lauderdale,* 293 F.2d 337 (5th Cir. 1961).

Plaintiff's contention that the sixty day period for filing suit, provided by Fla. Stat. 194.171(2), has expired, leaving her without an adequate state remedy, is without merit. The Fifth Circuit has previously rejected this contention, stating:

> The expiration of time in which the state suit might have been brought does not result in the destruction of the plain and simple remedy principle specified in the Johnson Act. To hold otherwise would allow any disgruntled taxpayer to simply wait until the statute of limitations had run in the state courts and then bring suit in the federal court.

Henry vs. *Metropolitan Dade County,* 329 F.2d 780 (5th Cir. 1964).

CONCLUSION

From the foregoing discussion, it is clear that this is a suit to "enjoin, suspend or restrain the assessment, levy or collection" of a state tax and that a "plain, speedy and efficient remedy" may be had in the state courts. Pursuant to 28 U.S.C. § 1341, this Court is therefore divested of jurisdiction. It is thereupon

ORDERED and ADJUDGED that the defendants' motions to dismiss are granted.

DONE and ORDERED at West Palm Beach, Florida this 23d day of July, 1975.

/s/ CHARLES R. FURTON,
Chief Judge

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 75-3484

VIRGINIA W. LUCOM, *Plaintiff-Appellant,*

versus

DAVID L. REID, ETC., ET AL., *Defendants-Appellees.*

Appeal from the United States District Court for the Southern District of Florida

(April 15, 1977)

Before JONES, COLEMAN and TJOFLAT,
Circuit Judges.

PER CURIAM:

The appellant, in her district court action sought relief from an asserted overvaluation of real estate for ad valorem taxes by a complaint framed as a civil rights action under 42 U.S.C.A. §§ 1985, 1986 and the Equal Protection clause of the United States Constitution. The Congress has said that "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C.A. § 1341. It cannot be said that such State remedy does not exist. The judgment of the district court is AFFIRMED.

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-89

VIRGINIA W. LUCOM,
Petitioner,

vs.

DAVID L. REID, et al.,
Respondents.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS CLARK, JOHNSON, CULPEPPER, SMALL, CIKLIN AND EFFINGER

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Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-89

VIRGINIA W. LUCOM,
Petitioner,

vs.

DAVID L. REID, et al.,
Respondents.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS CLARK, JOHNSON, CULPEPPER, SMALL, CIKLIN AND EFFINGER

STATEMENT OF THE CASE

Petitioner filed this suit as a civil rights action in the United States District Court for the Southern District of Florida. The essence of her complaint is that her property is over-assessed, and that there is a conspiracy to confiscate her property by various public officials who classified it, in a county land use plan, as a park. Petitioner's complaint (Appendix A, page 1A) and the memorandum opinion written by the United States District Court Judge (Appendix C, page 20A) confirm this.

Petitioner did not file any suit in state court or follow any administrative proceedings prior to filing this suit in federal court for tax relief. The district court judge concluded that federal jurisdiction did not lie because this was a suit to restrain the assessment or collection of a state tax, and that the State of Florida had a "plain, speedy and efficient remedy".

ARGUMENT

As petitioner notes on page 4 of her brief, 28 U.S.C. 1341 provides that the district courts shall not restrain the assessment or collection of taxes under state law where an efficient remedy is available in state courts. In the present case the petitioner sought no relief in state court nor any administrative relief. As a first step for obtaining tax relief she instituted this civil rights action in the United States District Court for the Southern District of Florida.

The essence of petitioner's complaint is that her real property is being over-assessed. The fact that she has labeled this case as a civil rights action does not give her a basis to avoid the applicability of 28 U.S.C. 1341.

In *Bland* v *McHann*, 463 F.2d 21 (5th Cir. 1972), the court was confronted with a factual situation very similar to the present case. A civil rights action was brought by Negroes who were complaining that their property had been increased in valuation by the taxing authorities while most property owned by whites had not been increased. They alleged that the tax assessment was solely as a result of racial discrimination and that it was in retaliation for demonstrations by the Negroes. The court held that 28 U.S.C. 1341 controlled and that the federal courts did not have jurisdiction of the action.

In *Hickmann* v. *Wujick*, 488 F.2d 875 (2nd Cir. 1973), the plaintiff was seeking an injunction, declaratory relief, and damages in a case, which, like this one, was essentially for tax relief. The Second Circuit held that this attempt was nothing more than a "play on words", 488 F.2d at 876, and dismissed for lack of jurisdiction.

In *Evangelical Catholic Communion, Inc.* v. *Thomas*, 373 F.Supp. 1342 (D. Ver. 1973), a civil rights action again was the method by which the plaintiffs attempted to avoid 28 U.S.C. 1341. An action was brought for injunction and damages on the theory that property which was being taxed was exempt for religious reasons. The court pointed out on page 1344 that in order to make a determination as to whether the plaintiffs could recover damages it would be necessary for the court to first enter a declaratory judgment which would be in violation of 28 U.S.C. 1341.

Petitioner contends that the decision in this case conflicts with *Bamford* v. *Garrett*, 538 F.2d 63 (3rd Cir. 1976). That case is distinguishable both on the facts involved and the law applicable. The plaintiff's claim in that case was that property values in non-white areas of a certain Pennsylvania County were declining while values in white neighborhoods within the same county were increasing. This fact combined with the fact that annual assessments were not being made of the property, resulted in unfair discrimination in taxes. Plaintiffs sought an injunction requiring Pennsylvania authorities to make annual assessments and to assess the property on a non-discriminatory basis. The Third Circuit analyzed Pennsylvania law and the remedies available to taxpayers, concluding that they were inadequate in this type of case. The court specifically found that Pennsylvania did not provide a "plain, speedy and efficient remedy" in accordance with 28 U.S.C. 1341.

The present case does not involve racial discrimination or a class action as was involved in the above case. In the present case the petitioner merely seeks tax relief for herself individually.

Nor can it be said that Florida law does not provide the taxpayer with an efficient remedy. Fifth Circuit Court of Appeals has expressly held that Florida does provide a plain, speedy and efficient remedy within the meaning of 28 U.S.C. 1341 in *Carson* v. *City of Fort Lauderdale*, 293 F.2d 337 (5th Cir. 1961).

Petitioner argues that Florida does not follow the law set forth by this Court in *Sioux City Bridge Co.* v. *Dakota County*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340. This argument is incorrect. *Dade County* v. *Salter*, 194 So.2d 587 (Fla. 1966), holds that relief will be granted to a taxpayer who alleges that there is a systematic assessment of all property at a lower percentage of full value than the percentage of the value attributed to his property. The Florida Supreme Court cited the *Sioux City* case which holds the same effect, that is, that where all others are assessed at less than 100% of value, the taxpayer is entitled to relief.

It is thus clear that Florida does adhere to the principles announced in the *Sioux City* case, however petitioner has failed to avail herself of such a remedy in the Florida courts.

We see no need to respond on a case by case basis to the other authorities cited by petitioner. The cases from jurisdictions other than Florida are inapplicable because, as we pointed out above, Florida has been found to provide a "plain, speedy and efficient remedy" to the taxpayer.

The Florida cases relied on by petitioner are not in point either. In the quotation on pages 26 and 27 of the petition, which is taken from *Schooley* v. *Sunset*, 185 So.2d

1 (Fla. 2d DCA 1966), it is obvious that the *Cosen* and *Sproul* cases relied on by petitioner did not involve any claims in which constitutional questions regarding equal protection or intentional under-evaluation of other property were raised.

CONCLUSION

The United States District Court Judge properly concluded that this is a suit to restrain the assessment and collection of state taxes, and since Florida has adequate relief available in its state courts, the federal district court was without jurisdiction. This petition for certiorari should be denied.

Respectfully submitted,

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By: LARRY KLEIN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished, by mail, this 10th day of August, 1977, to PAUL J. FOLEY, 710 Pennsylvania Building, Washington, D.C. 20004, L. M. TAYLOR, P. O. Box 14577, North Palm Beach, Florida 33408 and to HAROLD F. X. PURNELL, Assistant Attorney General, Office of the Attorney General, The Department of Legal Affairs, The Capitol, Tallahassee, Florida 32304.

LARRY KLEIN

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-89

VIRGINIA W. LUCOM, Petitioner

v.

DAVID L. REID, etc., et al., Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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TABLE OF CASES

SUPREME COURT OF THE UNITED STATES

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v.

DAVID L. REID, etc., et al., Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioner filed suit in the United States District Court for the Southern District of Florida, seeking Federal Court review of an allegedly improper Florida ad valorem real property tax assessment on a 545 acre tract of land in Palm Beach County, Florida.

The five count complaint was framed as a civil rights action under 42 U.S.C.A.1985, 1986, and

the Equal Protection clause of the United States Constitution. As relief, Petitioner sought to enjoin the tax sale of the property, the award of damages, declaratory relief and further injunctive relief. All defendants filed, among other motions, motions to dismiss raising the Tax Injunction Act. Upon consideration of the motions and briefs of all parties, the District Court dismissed plaintiff's suit, grounding said dismissal on the Tax Injunction Act.

Upon appeal to the United States Court of Appeals for the 5th Circuit, the Court of Appeals by per curiam opinion affirmed the judgment of the District Court.

ARGUMENT

1. THERE IS NO CONFLICT AMONG THE CIRCUITS

Petitioner contends that the decision below is in conflict with the opinion of the Third Circuit Court of Appeals in Bamford v.Garrett, 538 Fed.2d 63. The decision below in no way conflicts with Bamford. The factual situation in Bamford is a pole apart from the present case. In Bamford a group of property owners for themselves and for a class of similarly situated taxpayers alleged discrimination in the assessment procedure in a Pennsylvania County and sought a review and supervision of assessment procedures in the future to prospectively prevent the alleged discrimination. In Bamford the 3rd Circuit conceded that this was, in fact, a suit that would be within the prohibition contained in the Tax Injunction Act, provided that Pennsylvania afforded a "plain, speedy and efficient

remedy". The Court held that because of the uncertainty of Equity Jurisdiction in Pennsylvania under decisions of the Pennsylvania Supreme Court it could not be said that the Plaintiff's equitable remedy was "plain, speedy and efficient". Further Pennsylvania's statutory remedy would require a multiplicity of individual suits attacking individual assessments and thus the statutory remedy was not "plain, speedy and efficient".

In the present case, Florida Statutes afford a plain, speedy and efficient remedy for a taxpayer, such as petitioner, who claims an excessive assessment. Carson v.City of Fort Lauderdale, 293 F.2d.337 (5th Cir.1961). The multiplicity of suit question involved in Bamford does not exist in the present case.

2. THE DECISION BELOW DOES NOT VIOLATE THE USUAL AND NORMAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

Petitioner's complaint filed in the District Court is an action to enjoin, suspend or restrain the assessment, levy or collection of a tax under the Laws of the State of Florida.

The mere allegation that it is a civil rights suit rather than a tax injunction suit will not prevent 28 U.S.C.1341 from divesting the Court of jurisdiction. Hickman v.Wujick, 488 F.2d. 875 (2d Cir.1973); Bland v.McHann, 463 F.2d. 21 (5th Cir.1972).

Petitioner's claim for money damages is

insufficient to avoid the jurisdictional bar of 28 U.S.C.1341. Evangelical Catholic Communion, Inc.v.Thomas, 373 F.Supp.1342 (D.Ver.1973).

Thus, accepting as true all of the material allegations of the complaint, it is readily apparent that this entire action is inextricably entangled with Florida's tax law. Where that is true, Federal Courts are without subject matter jurisdiction by the statutory mandate contained in 28 U.S.C.1341.

3. THE DECISIONS OF THE SUPREME COURT OF FLORIDA DO NOT CONTRADICT THE STANDARDS SET BY THIS COURT IN Sioux City Bridge Co. v.Dakota County, 260 U.S.441

Petitioner argues that Florida does not follow the law as set forth by this Court in Sioux City Bridge Co. v.Dakota County, 260 U.S.441 and that for this reason Florida's remedy for an alleged over-assessment is not "plain, speedy and efficient". This argument is just not valid.

The decisions of the Florida Courts recognize and follow the standards set forth by this Court in Sioux City Bridge Co., v.Dakota County, 260 U.S.441. In Sioux City, supra, the plaintiff alleged that the defendant County Assessor and defendant County Board of Equalization intentionally and arbitrarily assessed the Bridge Company's property at 100% of its true value and all the other real estate and its improvements in the county at 55%. (Emphasis supplied).

In Sioux City, supra, this Court then stated the principle to be applied in the following terms:

> "This Court holds that the right of the taxpayer whose property alone is taxed at 100% of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute."

Dade County v. Salter, 194 So.2d.587 (Fla.1966) holds that relief will be granted to a taxpayer who alleges that there is a systematic assessment of all property at a lower percentage of full value than the percentage of full value attributed to his property. The Florida Supreme Court cited Sioux City, supra, which holds to the same effect, that is, that where all others are assessed at less than 100% of value, the taxpayer is entitled to relief. The Sioux City decision involved a factual situation where all other properties were being assessed at a lower rate, not just some, as petitioner contends here.

The Florida Supreme Court in Southern Bell Tel.& Tel.Co. v. County of Dade, 275 So.2d.4, (Fla. 1973) again recognized and followed Sioux City and Township of Hillsborough v. Cromwell, 326 U.S.620. Again in 1976, the Supreme Court of Florida recognized the Sioux City principle in Deltona Corp.v.Bailey, 326 So.2d.1163 (Fla.1976) although the case was distinguished on other grounds.

In none of the cases cited by petitioner did the plaintiff allege facts to bring the case within the Sioux City rule. In Spooner v.Askew, 345 So.2d. 1055 (Fla.1976) plaintiffs admitted uniformity and

equality within their taxing unit and among themselves. In Cosen Inv.Co.,Inc. v.Overstreet, 17 So.2d 788, there was no allegation that plaintiff's property alone was taxed at full value, as was the case in Sioux City.

It is thus clear that Florida does adhere to the principles announced in the Sioux City case. However, petitioner has failed to avail herself of her remedy in the Florida Courts.

4. FLORIDA LAW PROVIDES A "PLAIN, SPEEDY AND EFFICIENT REMEDY".

Florida law provides a "plain, speedy and efficient" remedy to review the actions of the property appraiser and to correct any errors be they of omission or commission. This was clearly stated in the opinion below and, indeed, the Fifth Circuit has previously held that Florida provides a "plain, speedy and efficient remedy" within the meaning of 1341. Carson v. City of Fort Lauderdale, 293 F.2d 337 (5th Cir.1961).

The record fails to show any attempt by petitioner to seek relief from the alleged designation of petitioner's land as a "park". Petitioner has failed to pursue her remedies in the Courts of Florida under either the zoning laws or the laws of condemnation just as she has failed to avail herself of the "plain, speedy and efficient remedy" to attack the assessment.

CONCLUSION

Petitioner's complaint in the District Court is an action to enjoin, suspend or restrain the assess-

ment, levy or collection of a tax under the laws of the State of Florida.

Petitioner's remedy in the Courts of Florida is "plain, speedy and efficient".

The decision below does not conflict with the applicable decisions of this Court nor does it conflict with the decision of another Court of Appeals, nor has there been any departure from usual and normal course of judicial proceedings as to call for an exercise of this Court's power of supervision.

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

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Attorney for David L. Reid and Charles H. Stahman.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the Respondent's Brief in Opposition have been furnished, by mail, this 11th day of August, 1977, to the following:

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IN THE

UNITED STATES SUPREME COURT

OCTOBER TERM, 1976

NO. 77-89

VIRGINIA W. LUCOM, Petitioner

v.

DAVID L. REID, ETC., et al., Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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HARRY L. COE, JR.
EXECUTIVE DIRECTOR
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REVENUE

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QUESTIONS PRESENTED

Because of the verbose and confusing nature of the eight issues presented by Petitioner, Defendant, Harry L. Coe, Jr.,

as Executive Director of the Department of Revenue, as pursuant to Supreme Court Rule 40.3, restated the questions presented as follows:

1. Whether Plaintiff's complaint filed in the Federal District Court for the Southern District of Florida is in substance a suit to enjoin, suspend or restrain the assessment, levy or collection of a state tax so as to fall within the jurisdictional bar of 28 U.S.C. §1341, the Tax Injunction Act.

2. Whether Plaintiff has a plain, speedy and efficient remedy in the Florida State courts within the meaning of 28 U.S.C. §1341, by which the challenged tax assessment could be contested.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATUTES

Florida Statute 26.012(2)(e)(1974 Supp.)

> (2) [Circuit Courts] shall have exclusive original jurisdiction:
>
> (e) In all cases involving legality of any tax assessment or toll.

Florida Statute 68.01 (1973)

> Declaring tax assessment invalid.--When an assessment is made against any person, body, politic or corporate and payment is refused on an allegation of illegality of the assessment, the person, body corporate or politic may file an action in chancery setting forth the alleged illegality. The court has jurisdiction to decide the matter and if the assessment is illegal, shall declare the assessment not lawfully made.

Florida Statute 86.011 (1973)

> Jurisdiction of circuit court.--The circuit courts have jurisdiction to declare rights, status and other equitable or legal relations whether or not further relief is or could be claimed. No action or procedure is open to objection on the ground that a declaration may be either affirmative or negative in form and effect and such declaration has the force and effect of a final judgment. The court may render

declaratory judgments on the existence, or non-existence:

(1) Of any immunity, power, privilege or right; or

(2) Of any fact upon which the existence or nonexistence of such immunity, power, privilege or right does or may depend, whether such immunity, power, privilege or right now exists or will arise in the future. Any person seeking a declaratory judgment may also demand additional, alternative, coercive, subsequent or supplemental relief in the same action.

Florida Statute 86.021 (1973)

Power to construe, etc.--Any person claiming to be interested or who may be in doubt about his rights under a deed, will, contract or other article, memorandum or instrument in writing or whose rights, status or other equitable or legal relations are affected by a statute, or any regulation made under statutory authority, or by municipal ordinance, contract, deed, will, franchise, or other article, memorandum or instrument in writing may have determined any question of construction or validity arising under such statute, regulation, municipal ordinance, contract

deed, will, franchise, or other article, memorandum or instrument in writing, or any part thereof, and obtain a declaration of rights, status or other equitable or legal relations thereunder.

Florida Statute 86.101 (1973)

Construction of law.--This chapter is declared to be substantive and remedial. Its purpose is to settle and to afford relief from insecurity and uncertainty with respect to rights, status and other equitable or legal relations and is to be liberally administered and construed.

Florida Statute 86.111 (1973)

Adequate remedy does not preclude.--The existence of another adequate remedy does not preclude a judgment for declaratory relief. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. The court has power to give as full and complete equitable relief as it would have had if such proceeding had been instituted as an action in chancery.

Florida Statute 197.171(1)(2)(1974 Supp.)

Circuit court to have original jurisdiction in tax cases.--

(1) The circuit courts have original jurisdiction at law of all matters relating to property taxation. Venue is in the county where the property is located.

(2) No action shall be brought to contest a tax assessment after 60 days from the date the assessment being contested is certified for collection under s. 193.122(2).

Florida Statute 194.211 (1973)

Injunction against tax sales.-- In any tax suit, the court may issue injunctions to restrain the sale of real or personal property for any tax which shall appear to be contrary to law or equity, and in no case shall any complaint be dismissed because the tax assessment complained of, or the injunction asked for, involves personal property only.

Florida Statute 195.106 (1974 Supp.)

Department of Revenue to pass upon and order refunds.--

(1) The Department of Revenue shall pass upon and order refunds where payment has been made voluntarily or involuntarily of taxes assessed on the county tax rolls by reason of either of the following circumstances:

(a) Any over-payment;

(b) Payment where no tax was due; or

(c) Where a bona fide controversy exists between the tax collector and the taxpayer as to the liability of the taxpayer for the payment of the tax claimed to be due, the taxpayer may pay the amount claimed by the tax collector to be due, and if it is finally adjudged by a court of competent jurisdiction that the taxpayer was not liable for the payment of the tax or any part thereof.

28 U.S.C. §1341

Taxes by States. The District Court shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state.

STATEMENT OF THE CASE

Petitioner for the 1974 tax year received an assessment of $10,993,400 on 545 acres of realty owned by her in Palm Beach County, Florida. Petitioner, without any resort to the State Courts, filed a Complaint in the United States District Court for the Southern District

District of Florida seeking Federal Court review of the aforesaid ad valorem tax assessment which she alleged to be improper. Such suit prayed for temporary and permanent enjoinment of a threatened tax sale, a declaration of the 1974 state tax assessment on the realty was void, an affirmative injunction against the Palm Beach County Property Appraiser (Tax Assessor) to correct the 1974 assessment on the realty, $3,000,000 in damages and other legal and equitable relief. Respondent, Harry L. Coe, Jr., as Executive Director of the Department of Revenue, as did the other Defendants to said action, filed a Motion to Dismiss raising the Federal Tax Injunction Act, 28 U.S.C. §1341, asserting that said statute provided a jurisdictional bar to the District Court's consideration of the case on the grounds that Florida provided a plain, speedy and efficient

remedy in State Court. Upon consideration of the motions, the District Court agreed with the Defendants and dismissed Petitioner's suit,grounding such dismissal expressly on the Tax Injunction Act.

The Petitioner thereafter sought appellate review of the District Judge's ruling in the Fifth Circuit Court of Appeals. Upon review, the Fifth Circuit Court of Appeals per curiam affirmed the District Court Judge, expressly holding that Florida provided a plain, speedy and efficient remedy within the terms of the Tax Injunction Act.

Petitioner then sought the instant certiorari review before this court.

ARGUMENT

POINT I

THE DECISION BELOW CORRECTLY INTERPRETED THE SUBSTANCE OF PETITIONER'S COMPLAINT TO BE A SUIT SEEKING RELIEF FROM AN

ASSERTED OVER VALUATION OF REAL ESTATE FOR AD VALOREM TAX PURPOSES THOUGH FRAMED AS A CIVIL RIGHTS ACTION, THEREFORE, SAID ACTION WAS PROPERLY BARRED BY THE FEDERAL TAX INJUNCTION ACT.

In the Courts below, the Executive Director of the Florida Department of Revenue was made a party defendant solely in his capacity "as Executive Director of the Florida Department of Revenue" and by reason of his "failure to properly supervise Defendant Reid as required by law, and as principal revenue official of the State of Florida." It is axiomatic since the Executive Director was joined in this suit only in his official capacity, the only manner by which Petitioner's action can have relevance to him is in connection with the allegedly erroneous ad valorem tax assessment on Petitioner's realty. Before such connection can be

established, however, it is necessary that the Federal District Court first determine that Plaintiff's 1974 tax assessment was in fact and in law erroneous and that such erroneous assessment was an unconstitutional infringement on the Petitioner's right to equal protection of the law in the application of ad valorem tax statutes of the State of Florida.

Whatever the cause of action may be called by Petitioner, a civil rights act, declaratory relief action, an injunctive relief action, the District Court below was exclusively being called upon to perform, in substance, one judicial endeavor, declare Petitioner's 1974 ad valorem real property assessment void. Without this judicial declaration, no other relief prayed for by Petitioner could follow against this Respondent.

This the District Court below clearly recognized, wherein it noted:

> Calling the Complaint a civil rights action cannot conceal the fact that this entire action is inextricably intangled with Florida's tax law. Where this is true, federal courts are statutorily mandated by §1341 to follow a policy of non-intervention. The Plaintiff here seeks both injunctive relief against the county tax authorities, in addition to declaratory relief. This case is essentially one to enjoin, suspend or restrain the assessment, levy or collection of a state tax. Clearly, the reasoning of the Bland v. McHann and Kimmey v. Berkheimer cases is applicable to this lawsuit. . . . (A-71)

The District Court's determination, as affirmed by the Fifth Circuit Court of Appeals, that 28 U.S.C. §1341 bars injunctive relief against a state tax assessment is supported, not only by the clear and express language of the statute, but by the unanimous weight of judicial authority. See Tully v. Griffin, ___ U.S.___97 S.Ct. 219, 50 L.Ed. 2d 227 (1976),

Miller v. Bauer, 517 F.2d 27 (7th Cir. 1975); Tramel v. Schrader, 505 F.2d 1310 (5th Cir. 1975); Bland v. McMann, 463 F.2d 21 (5th Cir. 1972); Carter v. County Board of Education of Richmond County, Georgia, 393 F.2d 487 (5th Cir. 1960); Bussie v. Long, 383 F.2d 766 (5th Cir. 1967); and Henry v. Metropolitan Dade County, 329 F.2d 780 (5th Cir. 1964).

The District Court's determination, as affirmed by the Fifth Circuit Court of Appeals, that 28 U.S.C. §1341 bars declaratory relief as to the validity of a state tax assessment is likewise grounded on the unanimous weight of authority. See Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293, 63 S. Ct. 1020, 87 L.Ed 1407 (1943); Ford Motor Credit Co. v. Louisiana Tax Commission, 440 F.2d 675 (5th Cir. 1971); City of

Houston v. Standard-Triumph Motor Co., 347 F.2d 194 (5th Cir. 1965); Charles R. Shepard, Inc. v. Monaghan, 256 F.2d 882 (5th Cir. 1958); and Evangelical Catholic Communion, Inc. v. Thomas, 373 F. Supp. 1342 (Vt. 1973), affirmed without opinion, 483 F.2d 1397 (2nd Cir. 1974).

Petitioner's assertion that the Decision below of the Fifth Circuit Court of Appeals is in conflict with the decision of the Third Circuit in Garrett v. Bamford, 538 F.2d 63 (3rd Cir. 1976), is wholly without merit. First, as is clearly noted by the Third Circuit, the basis of the complaint at issue in the Garrett case is one grounded upon allegations of intentional racial discrimination.

> The gravamen of the complaint is that the method of assessing the value of plaintiffs' property, on which real estate and school taxes are based, is intentionally

> racially discriminatory in violation of 42 U.S.C. §§1981, 1983 (1970), and the Fourteenth Amendment.
>
> Plaintiffs allege that their properties are assessed at values which are higher than the values assigned to similar properties in predominantly or exclusively white areas of Berks County. They further contend that their assessments constitute a greater percentage of their properties' actual value than do the assessments of properties in white areas generally. They claim that the result of the discriminatory assessments is that plaintiffs bear a disproportionately heavy burden in their city and county real estate and school taxes. Plaintiffs aver that this discrimination is systematic and intentional. Cf. Washington v. Davis, ___U.S.___, 96 S.Ct. 2040, 48 L.Ed.2d 597, 44 U.S.L.W. 4789 (1976).
>
> The chief method of accomplishing this discrimination, according to plaintiffs, is defendants' failure to make annual assessments of property values as required by state law. See 72 P.S. §5344(a) (Supp. 1975). Plaintiffs claim that property values in non-white areas of the county are declining, while values

> in white neighborhoods are increasing. Failure to make the annual assessments thus results in a tax based on higher than actual value in non-white areas and one based on lower than actual values in white neighborhoods. Accordingly, the principal relief plaintiffs seek is an injunction requiring defendants immediately to cause the assessment of all residential property within the county on a non-discriminatory basis and to make an annual assessment with proofs submitted to the court to demonstrate that the assessment is uniform and non-discriminatory.
> (supra at 65,66)

In the instant matter, the Petitioner has made no allegation whatsoever of any racially discriminatory intent on the part of the Respondent, Executive Director of the Florida Department of Revenue, nor has any such racial discriminatory allegation been made against any of the other Respondents to this action. Instead, Petitioner simply alleges that she has been over assessed for ad valorem tax purposes on a parcel of realty owned by her in Florida.

Secondly, the alleged racial discrimination alleged in Garrett v. Bamford was a result of what is generally referred in the state and local tax field as cyclical reassessment, i.e. where some but not all of the county or taxing district is reassessed for ad valorem tax purposes in one year with the remaining portions of the county or taxing districts reassessed in the immediately succeeding year or years. Such a situation may result in those parcels revalued in the current year being assessed at all or a higher portion of just value than those properties not reassessed thereby creating unequal taxation on a county wide basis. This failure to assess all property in the county in one year is the key element in the Garrett v. Bamford decision since it formed the basis for the Court's ruling

that Pennsylvania's administrative and judicial review remedies for individual taxpayers constituted an insufficient remedy when applied to the class of taxpayer involved. Indeed, such fact was clearly stressed by the Court in their holding:

> Applying our conclusion precisely to these proceedings, we hold that when plaintiffs allege systematic and intentional class based racial discrimination in tax assessments, Pennsylvania does not provide a 'plain speedy and efficient remedy.' Thus, a federal action seeking injunctive relief to alleviate the alleged discrimination is not barred by 28 U.S.C. §1341.

Finally, the Court in Garrett v. Bamford closely analyzed the equitable remedies available to taxpayers in the State of Pennsylvania. The Court noted that taxpayers in Pennsylvania may bring an equitable action only when they challenge the constitutionality of the

underlying tax statute. In situations where the assessment but not the underlying statute is being challenged, the Pennsylvania taxpayer must resort to an administrative appeal with judicial review therefrom which is clearly designed for an individual taxpayer and not for a class of aggrieved taxpayers. Florida taxpayers, however, either on an individual or on a class basis, are provided relief in equity upon a showing that they are bearing a disproportionate share of the ad valorem tax burden. Southern Bell Telephone and Telegraph Company v. County of Dade, 275 So.2d 4 (Fla. 1973), and City of Naples v. Conboy, 182 So.2d 412 (Fla. 1965).

Consequently, the purported defects in the tax review procedures provided by the State of Pennsylvania as stressed by the Court in Garrett v. Bamford, are

neither germaine to the issues presented by Petitioner's action nor do they exist in Florida's system of review of ad valorem tax assessment.

POINT II

FLORIDA PROVIDES A PLAIN, SPEEDY AND EFFICIENT REMEDY BY WHICH AGGRIEVED AD VALOREM TAXPAYERS MAY CHALLENGE THE ASSESSMENT OF TAXES UPON THEIR REAL PROPERTY.

The Fifth Circuit Court of Appeals in the case of Carson v. City of Fort Lauderdale, 293 F.2d 337 (5th Cir. 1961), unequivocally held that Florida provided a plain, speedy and efficient remedy within the meaning of 28 U.S.C. §1341. The Court ruled:

> To mention only a few of the numerous Florida Statutes that provide plain, speedy and efficient remedy for the plaintiffs in this case, the Court first calls attention to Florida Statutes, Section 196.01, 1959, F.S.A., which provides:
>
> 'Courts in chancery in this state shall have jurisdiction in

> all cases involving the legality of any tax, assessment or toll, and shall inquire into and determine the legality, equality and validity of the same under the constitution and laws of Florida, and shall render decrees setting aside such tax, assessment or toll, or any part of the same, that shall appear to be contrary to law * * *'
>
> The Florida Declaratory Decree Act, Florida Statutes, Section 87.01 et seq., F.S.A., provides clearly a plain, speedy and efficient remedy to test the right of the defendant city to proceed with its sewer program. Section 87.12 of the Declaratory Decree Act provides:
>
> 'The circuit court may order a speedy hearing of an action for a declaratory decree, judgment or order and may advance it on the calendar.'
>
> While other laws of the State could be referred to, this is sufficient on this point.

The same statute mentioned by the Fifth Circuit Court in the first paragraph of the above quote, F.S. 196.01, 1959, F.S.A., is now found in

F.S. 194.171(1) and F.S. 26.012(2)(e).

The Florida Declaratory Decree Act cited in the third paragraph of the above quote, F.S. 87.01, et seq., is now found in F.S. 86.011, et seq., and the specific provision of the Declaratory Decree Act cited by the Court, F.S. 87.02, is now found in F.S. 86.111.

Hence, the same statutory framework cited by the Fifth Circuit Court in Carson v. City of Ft. Lauderdale, supra, in holding that Florida provides a plain, speedy and efficient remedy continues to this day. It therefore follows that the same rationale used by the Court in Carson, supra, at 339, namely "While other laws of the State could be referred to, this is sufficient on this point," likewise continues.

Florida, in fact, provides clear statutory remedies for judicial review of or other challenges to tax assessments

in addition to the administrative remedies cited in the Opinion of the District Court below. (A-24a-25a) First, as to assessments deemed "voidable," i.e., "those made in good faith but which are irregular or unfair," Lake Worth Towers, Inc. v. Gerstung, 262 So.2d 1 (Fla. 1972), F.S. 194.171(1) permits them to be challenged in circuit court within 60 days of certification of the tax roll as provided in F.S. 194.171(2). The taxpayer as a pre-requisite to such a challenge is, pursuant to F.S. 194.171(3), required to pay only those taxes admitted to be due. Failure to file suit within the 60 day period, after which state courts lost subject matter jurisdiction of the action,does not result however in the loss of a plain, speedy and efficient

state remedy so as to invest a federal court with jurisdiction. Henry v. Metropolitan Dade County, 329 F.2d 780 (5th Cir. 1964).

Second, as to "void" assessments, i.e., assessments not authorized by law, where the property is not subject to the tax assessed or where the tax roll is illegal due to some affirmative wrongdoing by the taxing official, Lake Worth Towers, Inc. v. Gerstung, supra, challenge is again permitted in circuit court, pursuant to F.S. 194.171(1), with the taxpayer required under F.S. 194.171(3) to pay only the taxes admitted to be due, F.S. 194.171(4). Compliance with the 60 day time period found in F.S. 194.171(2), however, is not required.

Third, F.S. 195.106 permits the taxpayer to pay the assessment and file for a refund.

Consequently, it simply cannot be said that Florida fails to provide to Petitioner and other aggrieved taxpayers a "plain, speedy and efficient remedy" within the meaning of 28 U.S.C. §1341.

Petitioner finally contends in support of her argument that Florida does not provide a plain, speedy and efficient remedy to aggrieved ad valorem taxpayers that recent decisions of the Supreme Court of Florida hold that equality is not necessary in real estate taxation thus contradicting the standard of both fair and equal taxation required by this Court in Sioux City Bridge v. Dakota County, 260 U.S. 441 (1923). Petitioner's argument apparently is that since Florida requires ad valorem real property taxes to be imposed upon the full just value of the property, the purported decisional

law of this State provides that taxpayers assessed at full value may not complain of their assessment and relief may not be granted in the form of a reduction of the assessment unless the taxpayer is assessed in an amount above full cash value of the property. This, however, is simply not the rule followed in Florida.

In Southern Bell Telephone and Telegraph Company v. County of Dade, 275 So.2d 4 (Fla. 1973), the taxpayer pled and proved that its taxable property was being assessed at full market value while all other property within the taxing district was being assessed at approximately 80% of just value. In such situation, the Florida Supreme Court upon review, held that a cause of action had been stated and that the taxpayer was entitled to relief.

In Dade County v. Salter, 194 So. 2d 587 (Fla. 1966), the taxpayer pled that he was being assessed at below full market value but at a higher percentage of market value than all property in the taxing district. The Florida Supreme Court upon review held that the taxpayer had pleaded a cause of action for relief upon the allegation that all property in the county was assessed at 47% of full value while the taxpayer's property was assessed at 87% of full cash value.

These cases clearly point out that a taxpayer who is assessed at a substantially higher level than all other property in the taxing district is entitled to relief by way of reduction of such taxpayer's assessment and is not relegated to seeking an upward valuation of all the other property. See also Schooley v.

Sunset Realty Corporation, 185 So.2d 1 (2 DCA Fla. 1966); Banks v. Schooley, 290 So.2d 135 (2 DCA Fla. 1974); and Deltona Corporation v. Bailey, 336 So. 2d 1163 (Fla. 1976).

CONCLUSION

For the foregoing reasons, it is respectfully submitted on behalf of Respondent, Harry L. Coe, Jr., Executive Director of the Florida Department of Revenue, that Petition for Writ of Certiorari filed in this matter be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief in Opposition to the Petition for Writ of Certiorari of Respondent, Harry L. Coe, Jr., Executive Director, Florida Department of Revenue, has been sent by U.S. mail this 12 day of August, 1977, to:

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PETITIONER'S REPLY TO RESPONDENTS' BRIEFS IN OPPOSITION

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PETITIONER'S REPLY TO RESPONDENTS' BRIEFS IN OPPOSITION

A. Opposition Briefs, Like Decisions Below, Refuse to Recognize Civil Rights Case, Such as Entire Second Count of Complaint.

A conspiracy in violation of 42 USC 1985 is alleged to exist prior to the time any assessment problem arose (Petition, pp. 11(a) through 13(a), being paragraphs 35 through 38 of the Complaint) and the assessor merely joined such conspiracy then in progress to add illegal assessment to the concerted program of zoning as a park and other activities of county officials to thwart

any normal uses of petitioner's private property. Thus defendants are using 28 USC 1341 to shield them from an actionable civil rights conspiracy. Such was under way long before the illegal taxation ever became a part of it.

B. Exhaustion of State Remedy Not Required In Civil Rights Case Re Property.

With reference to the suggestion in Opposition briefs that regarding Second Count of Complaint and zoning of private lands as a park, petitioner should have first exhausted her state remedies, this has never been required. *Powel* v. *Comp. Board,* 327 F 2d 131 and *Scolnick* v. *Winston,* 329 F 2d 716. Moreover, 42 USC 1983 has been held to expressly authorize exception to the anti-injunction section, 42 USC 2283 in *Mitchum* v. *Foster,* 407 US 225 at 242.

That property is a civil right in contemplation, of 42 USC 1983, see *Lynch* v. *Household Finance,* 405 US 538 at 544 and 552.

Indeed, it could well be argued that the sweep of 42 USC 1983 is so complete that the federal constitution supremacy doctrine would pre-empt the area of infraction as was held in *Pennsylvania* v. *Nelson,* 350 US 497 with reference to another area of conduct.

C. Florida Attorney General's and Other Beliefs In Opposition to Petition Admit Florida Has No Procedure for Florida Real Estate Taxpayer to Obtain EQUALITY of Tax to Other Similarly Situated Parcels Except on Showing that Each and Every Other Taxpayer Was Taxed on a Uniformly Different Basis.

Misconstruing and misapplying the traditional standard set by this Court in *Sioux City Bridge* v. *Dakota County,* 260 US 441 at 446 for compliance with the

equal protection clause of the Fourteenth Amendment, namely, that the property be both (a) fairly valued and (b) equally assessed for real estate taxation, the Florida statutes, procedures and decisions afford no relief for a real estate taxpayer claiming unequal assessment unless he can prove that all (that is, each and every) other tax assessment are on a different basis from complainant's basis.

Thus in this *Lucom* case, petitioner's property was assessed for 1974 at twenty times that of scores of abutting and adjoining property with identical characteristics (Petition, (Complaint), page 3a, paragraph 5).

For the year 1975, petitioner's assessment was reduced 70% (Petition, page 17(a)) and adjoining and abutting property raised to equal that of petitioner's realty. Thus, belatedly admitting equal assessments would be just, the 1974 assessment here on appeal stands at twenty times that of scores of identical abutting and adjoining parcels, with an asserted market value six times higher than assessed in 1974. To obtain an assessment equal to that of the surrounding parcels for 1974 Florida law would require petitioner to prove that *all* land, except hers, in the county, or perhaps in the entire State, was assessed in the same ratio to fair market value in order for petitioner to get equality with her neighbors. There is no procedure for the petitioner to intervene in the assessed value assigned to other property owners. And there is no way for petitioner to obtain equality to all her neighbors unless she could prove, in effect, that no one else in the entire county was assessed up to fair market value.

The places in the opposing briefs where this illegal and illogical interpretation that *Sioux City Bridge, supra,* etc. provides equality is only when complainant is the single exception to an otherwise uniform standard are:

1. The Florida Attorney General's brief (white cover)
   (a) page 26, line 15, "While *all* other property within the taxing district was being assessed at approximately 80% of just value"
   (b) page 27, line 5, "but at a higher percentage than *all* property in the taxing district"
   (c) page 27, line 9 "upon the allegation that *all* property in the county was assessed at 47% of full value while the taxpayer's property was assessed at 87% of full cash value"
   (d) page 27, line 15 "a taxpayer who is assessed at a substantially higher level than *all other* property in the taxing district"
2. Brief of Respondent Clark, Tax Collector, et al (light blue cover)
   (a) page 4, line 15 "relief will be granted to a taxpayer who alleges that there is a systematic assessment of *all property* at a lower percentage of full value than the percentage attributed to his property"
   (b) page 14, line 18 "The Florida Supreme Court cited the *Sioux City* case which holds the same effect, that is, that where *all* others are assessed at less than 10% of value, the taxpayer is entitled to relief."

3. Brief on Behalf of Respondent Reid, Property Appraiser, et al (dark blue cover)
   (a) page 4, line 27 "*all the other real estate* and its improvements *in the county* at 58%."
   (b) page 5, line 2 "This Court holds that the right of the taxpayer whose property *alone* is taxed at 100% of its true value is to have his assessment reduced . . ."
   (c) page 5, line 10 "there is a systematic assessment of *all* property at a lower percentage."
   (d) page 5, line 15 "that where *all* others are assessed at less than 100% of value." (Italics added)

All Florida Courts and Officials Are Thus Seizing Upon Language in *Sioux City* case, supra, to Deny Constitutionally Required Equity Unless Complainant Is Sole Victim In Taxing District. *Hillsborough,* and Common Sense Require Otherwise.

"The right is the right to equal treatment." *Hillsborough* v. *Cromwell,* 326 US 620 at 623, cited in petition.

The Florida interpretation of the constitutional requirement is erroneous because (a) it requires that complainant be the sole victim of the inequality and (b) it requires victim to so prove that he alone was so victimized.

In *Sunday Lake Iron* v. *Wakefield,* 247 U.S. 350 at 352-3, this Court stated

> The purpose of the equal protection clause of the 14th Amendment is to secure every person within the state's jurisdiction against intentional

and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond* v. *Chicago Union Traction Co.* 207 U.S. 20, 35, 37, 52 L. ed. 78, 87, 88, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757.

In *Hillsborough* v. *Cromwell,* supra, this Court stated

> The rule was stated in *Royal Mfg. Co.* v. *Board of Equalization,* 76 N.J.L. 402, 70 A. 978, affirmed 78 N.J.L. 337, 74 A. 525, as follows:
>
> "* * * the county boards are required to secure taxation of all property at its true value; so that the fact that the property of A. is assessed at its true value, and the property of other taxpayers within the same district is assessed below its true value, affords A. no ground for demanding a reduction of his valuation, though it does entitle him to apply for an increase in the valuation of the others."
>
> 76 N.J.L. pages 404, 405, 70 A. page 979. On the basis of that rule it is plain that the state remedy is not adequate to protect respondent's rights under the federal Constitution.

Similarly, the petitioner's dilemma in trying to prove that *all* other realty in Palm Beach County was uniformly assessed is too onerous a burden and administratively unworkable to provide practical uniformity.

See also *Georgia R.* v. *Redwine,* 342 U.S. 299 at 303, holding similar "remedies" adequate to deprive district courts jurisdiction under 28 U.S.C. 1341.

Florida's Erroneous Requirement That ALL Others Be Dissimilarly Assessed Contrary to Holding in Cumberland Coal, 234 U.S. 23.

Indeed in *Cumberland Coal* v. *Board, etc.,* 234 U.S. 23, this Court applied the principle of equality under the *Sioux City* case, *supra,* doctrine to each of seven different cases which were consolidated and applied to seven different taxpayers, thus completely refuting the strained construction of Florida courts that complainant must be the sole victim of inequality in a tax district to get relief. The assessment pattern in *Cumberland, supra,* is very similar to that of this petitioner's case, but under the Florida construction no relief would be available to petitioner.

D. All Florida's Statutory Remedies Cited In Florida Attorney General's (white covered) Brief Relate to Procedural Law Which In Nowise Contravenes Florida's Substantive Law Making Equality Relief Available Only On Proof Complainant Is Sole Victim of Inequality In Entire Taxing District.

Since the substantive laws of Florida, as established in section C of this reply, supra, deny equality to petitioner, what difference does it make whether, or by how many ways a complainant can get into court just to be denied the federal guarantee of equality?

As Justice Frankfurter emphasized in *Nashville* v. *Browning,* 310 U.S. 362, dealing with comparable tax statutes:

> It would be a narrow conception of jurisprudence to confine the notion of "laws" to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice cannot supplant constitutional guarantees, but it can establish what is state law. The Equal Protection Clause did not write an

empty formalism into the Constitution. Deeply embedded traditional ways of carrying out state policy, such as those of which petitioner complains, are often tougher and truer law than the dead words of the written text.

E. Florida's Equitable Remedy (F. S. 68.01) Has Been Held Unavailable Unless Tax "Illegal" as a Matter of Law.

The illegal assessments which may be remedied under F.S. 68.01, the only equitable remedy possible, were discussed in 33 So. 291, wherein the Florida Supreme Court said:

> It was held in *Shear* v. *Commissioners,* 14 Fla. 146, that the statute giving a remedy for an illegal assessment embraces those assessments only in which there is error in matters of law, and that the judgment of the county commissioners upon a complaint for the abatement of a tax is a judicial act, in which the exercise of their discretion in fixing values cannot be revised by any other tribunal. It is said in the opinion, "Illegal assessments (that is, assessments wherein, independent of the exercise of a discretion as to value, there appears error in matter of law) are the assessments for which a party has a remedy by petition" under the statute. Under this ruling it was again announced in City of *Tampa* v. *Mugge,* 40 Fla. 326, 24 South, 489, that the remedy provided by the statute does not extend to the correction of a mere erroneous exercise of official judgment on the part of tax officers as to the valuation of property. It is evident, as was said in one case, that the statute does not undertake to give a remedy coextensive with the powers of a court of equity to prevent the collection of taxes. It is confined entirely to "illegality" of assessments, and when this is found to exist the court must "declare the assessment not lawfully made." In case of illegality resulting entirely in an overvaluation of property, the court would have no power under the remedy given by the statute to adjust values, but would be compelled to declare the assessment entirely unlawful; and the party might escape taxation entirely, though his property be liable thereto, based on its cash valuation. There are other features of the statute, indicating that it should not have a very broad scope. It does not seem to contemplate any power in the circuit judge to suspend action under the tax proceedings pending the hearing under the petition, nor is there anything said in the statute as to who shall be made parties defendant. It is a remedy allowed by the state in favor of persons and bodies corporate to have annulled an assessment of property in proceedings to collect revenue for governmental purpose on account of illegality in matters of law connected with the assessment. This court has acted under and enforced the statute in cases where petitions have been filed against county commissioners and municipal bodies. We are of opinion that the remedy given by the statute does not extend to individual assessments made by a county tax assessor, where the alleged illegality is confined entirely to, or results solely in, an excessive valuation of the property, whether it be in an erroneous exercise of judgment as to value, or the adoption of an erroneous principle in placing values.

Thus equitable relief under Florida law is not available to the petitioner or at best, so uncertain, under the *Hillsborough* case, *supra,* standard as to preclude applicability of 28 U.S.C. 1341.

Clearly the present Florida law provides no "plain, speedy and efficient remedy" for petitioner because (1) no equality is actually available under any circumstance short of proving petitioner was sole victim in

taxing district and (2) what partial relief as may be available is neither complete or certain. (See *Green* v. *Louisville,* 224 U.S. at 520, quoted at page 21 of petition.)

That the Fifth Circuit in *Carson* v. *City of Fort Lauderdale,* 293, F.2d 337 in 1961, may have found otherwise, now, sixteen years later, the Florida statutes have changed markedly and *Camp Phosphate* v. *Allen,* 81 So. 503, was overruled (see page 22 of petition) and the erroneous *Cosen* rule which does not require equity established (see pages 22-23 of petition).

F. Florida Newspaper Decries Vice of Present Inequality And Related Temptations and Evils.

In its November 24, 1976 edition, the responsible *Palm Beach Times,* the leading newspaper in Palm Beach County, Florida, featured its editorial denouncing the present lack of equality in Florida and warned of attendant ills in these words:

> "Failing to apply equality to assessments is depriving the individual assessor of one guideline for measurement in an area already controversial because of an absence of guidelines. In addition, the Court decision leaves the gates *open to influence and bribery in determining assets.* (emphasis added)

CONCLUSIONS

Because (a) Florida provides in reality no complete or certain remedy for petitioner's complaint against an assessment of TWENTY times that of her scores of neighbors (b) petitioner's Second Count is unrelated to taxation and hence immune to a 28 U.S.C. 1341 defense and (c) 28 U.S.C. 1341 should not have been used as a shield for conspiracy against petitioner's proper use of her property just because part of the conspiracy involves invidious conduct regarding assessment, the PETITION SHOULD BE GRANTED.

Respectfully submitted,

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